

# NATIVE HAWAIIAN FEDERAL RECOGNITION

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## JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF

REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

**S. 2899**

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE  
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS

AND

**H.R. 4904**

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE  
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS, TO PRO-  
VIDE A PROCESS FOR THE REORGANIZATION OF A NATIVE HAWAIIAN  
GOVERNMENT AND THE RECOGNITION BY THE UNITED STATES OF  
THE NATIVE HAWAIIAN GOVERNMENT

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AUGUST 29, 2000  
HONOLULU, HI

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# NATIVE HAWAIIAN FEDERAL RECOGNITION

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TUESDAY, AUGUST 29, 2000

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING  
JOINTLY WITH THE COMMITTEE ON RESOURCES, U.S.  
HOUSE OF REPRESENTATIVES,

*Honolulu, HI*

The committees met, pursuant to recess, at 8:35 a.m. at the Neal Blaisdell Center, 777 Ward Avenue, Honolulu, Oahu HI, Hon. Daniel K. Inouye (vice chairman of the committee on Indian Affairs) presiding.

Present: Senators Inouye and Akaka, Representatives Abercrombie and Mink, and Delegate Faleomavaega.

Senator INOUE. The committee will come to order.

Before we proceed, I am pleased to call upon Bill Amona for the pole. Please rise.

Mr. AMONA. [Prayer offered off-microphone, portions in native tongue.]

## STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. By authority granted by the leadership of the Congress of the United States, the Senate Committee on Indian Affairs and the House Committee on Resources convenes this morning to receive testimony on two measures that have been introduced in the Congress.

These bills will provide a process for the recognition of a native Hawaiian governing body. If enacted into law, these bills would provide for a government-to-government relationship with the United States.

There are 556 native governments that are formally recognized by the United States, and with whom the United States is presently engaged in government-to-government relations. There are another 160 native groups that are currently petitioning the United States for recognition as governments.

This recognition by the United States is a recognition of the sovereignty of those native governments, and their rights as governments to exercise governmental authorities, including their fundamental rights to self-determination and self-governance.

It is within this context that the measures we are considering today have been proposed. The legislation will provide a process for the recognition of the sovereignty of the native Hawaiian people, and their right to self-determination and self-governance.

It will provide a basis for government-to-government relations with the United States, and will preserve and protect those Federal programs that are currently extended to native Hawaiians because of their status as native people of the United States.

Programs such as health care, education, job training, employment opportunities, housing assistance, scholarships, language preservation, grave protection, and the repatriation of human remains and sacred objects.

As with other native governments, the recognition by United States of the sovereignty of the native people of Hawaii does not alter the relationship that the Federal Government has with any of the State governments, nor the citizens of the state.

While these bills provide authority for the proposed process for the reorganization of a native Hawaiian governing body, these bills do not address how that governing body might be composed.

It could, for incidence, be a governing body that is composed of governing entities from each of the islands, a confederation of governments, or it could take some other form. We believe that these are matters that are best addressed by those who wish to voluntarily associate themselves with a native Hawaiian governing entity.

In a similar matter, we hope that those who want to participate in the process of forming a governing body will provide us with guidance on the formulation of the commission that would certify a citizenship or membership role of native Hawaiians who have expressed their desire to be part of a process to form an interim governing council, to develop adopt organic governing documents and, thereafter, elect representatives to a native Hawaiian governing body.

Because these bills, if enacted, would become part of the body of the Federal law, the laws of United States, these bills do not address, nor do they preclude the relations and activities of native Hawaiians in international forums. The committees are calling upon the citizens of Hawaii to provide us with their thoughts, their manao, on whether they support passage of these measures, either as they are currently formulated, or with amendments.

These bills have been developed by native Hawaiians for native Hawaiians following extensive consultation, not only with the native Hawaiian community, but with representatives of other interested governments, Federal, State, and native governments.

Ultimately, however, it is the people of Hawaii who would decide whether these measures should be enacted into law. As the elected representatives of all of the citizens of Hawaii, we naturally await your guidance.

[Text of S. 2899, H.R. 4904 follow:]

106TH CONGRESS  
2D SESSION

# S. 2899

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. AKAKA (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-  
6 thority to address the conditions of the indigenous,  
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the  
9 State of Hawaii are indigenous, native people of the  
10 United States;

1           (3) the United States has a special trust rela-  
2           tionship to promote the welfare of the native people  
3           of the United States, including Native Hawaiians;

4           (4) under the treaty-making power of the  
5           United States, Congress exercised its constitutional  
6           authority to confirm a treaty between the United  
7           States and the government that represented the Ha-  
8           waiian people, and from 1826 until 1893, the United  
9           States recognized the independence of the Kingdom  
10          of Hawaii, extended full diplomatic recognition to  
11          the Hawaiian Government, and entered into treaties  
12          and conventions with the Hawaiian monarchs to gov-  
13          ern commerce and navigation in 1826, 1842, 1849,  
14          1875, and 1887;

15          (5) pursuant to the provisions of the Hawaiian  
16          Homes Commission Act, 1920 (42 Stat. 108, chap-  
17          ter 42), the United States set aside 200,000 acres  
18          of land in the Federal territory that later became  
19          the State of Hawaii in order to establish a homeland  
20          for the native people of Hawaii, Native Hawaiians;

21          (6) by setting aside 200,000 acres of land for  
22          Native Hawaiian homesteads and farms, the Act as-  
23          sists the Native Hawaiian community in maintaining  
24          distinct native settlements throughout the State of  
25          Hawaii;

1           (7) approximately 6,800 Native Hawaiian les-  
2       sees and their family members reside on Hawaiian  
3       Home Lands and approximately 18,000 Native Ha-  
4       waiians who are eligible to reside on the Home  
5       Lands are on a waiting list to receive assignments  
6       of land;

7           (8) the Hawaiian Home Lands continue to pro-  
8       vide an important foundation for the ability of the  
9       Native Hawaiian community to maintain the prac-  
10      tice of Native Hawaiian culture, language, and tradi-  
11      tions, and Native Hawaiians have maintained other  
12      distinctly native areas in Hawaii;

13          (9) on November 23, 1993, Public Law 103-  
14      150 (107 Stat. 1510) (commonly known as the Apol-  
15      ogy Resolution) was enacted into law, extending an  
16      apology on behalf of the United States to the Native  
17      people of Hawaii for the United States' role in the  
18      overthrow of the Kingdom of Hawaii;

19          (10) the Apology Resolution acknowledges that  
20      the overthrow of the Kingdom of Hawaii occurred  
21      with the active participation of agents and citizens  
22      of the United States and further acknowledges that  
23      the Native Hawaiian people never directly relin-  
24      quished their claims to their inherent sovereignty as  
25      a people over their national lands to the United

1 States, either through their monarchy or through a  
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-  
4 mitment of Congress and the President to acknowl-  
5 edge the ramifications of the overthrow of the King-  
6 dom of Hawaii and to support reconciliation efforts  
7 between the United States and Native Hawaiians;  
8 and to have Congress and the President, through the  
9 President's designated officials, consult with Native  
10 Hawaiians on the reconciliation process as called for  
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-  
13 ernment, Native Hawaiians have continued to main-  
14 tain their separate identity as a distinct native com-  
15 munity through the formation of cultural, social, and  
16 political institutions, and to give expression to their  
17 rights as native people to self-determination and  
18 self-governance as evidenced through their participa-  
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct  
21 Native Hawaiian community through the provision  
22 of governmental services to Native Hawaiians, in-  
23 cluding the provision of health care services, edu-  
24 cational programs, employment and training pro-  
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,  
2 native language immersion programs and native lan-  
3 guage immersion schools from kindergarten through  
4 high school, as well as college and master's degree  
5 programs in native language immersion instruction,  
6 and traditional justice programs, and by continuing  
7 their efforts to enhance Native Hawaiian self-deter-  
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in  
10 Native Hawaiian cultural practices, traditional agri-  
11 cultural methods, fishing and subsistence practices,  
12 maintenance of cultural use areas and sacred sites,  
13 protection of burial sites, and the exercise of their  
14 traditional rights to gather medicinal plants and  
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-  
17 serve, develop, and transmit to future Native Hawai-  
18 ian generations their ancestral lands and Native Ha-  
19 waiian political and cultural identity in accordance  
20 with their traditions, beliefs, customs and practices,  
21 language, and social and political institutions, and to  
22 achieve greater self-determination over their own af-  
23 fairs;

24 (16) this Act responds to the desire of the Na-  
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of  
2 Federal law for the Native Hawaiian people to exer-  
3 cise their inherent rights as a distinct aboriginal, in-  
4 digenous, native community to reorganize a Native  
5 Hawaiian governing body for the purpose of giving  
6 expression to their rights as native people to self-de-  
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-  
10 sibility for the welfare of the native peoples of  
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-  
13 ians as a distinct indigenous group within the  
14 scope of its Indian affairs power, and has en-  
15 acted dozens of statutes on their behalf pursu-  
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-  
18 thority to administer a portion of the federal  
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-  
21 affirmed the special trust relationship with the Na-  
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An  
24 Act to provide for the admission of the State of



1           Hawaii into the Union", approved March 18,  
2           1959 (Public Law 86-3; 73 Stat. 4) by—

3                   (i) ceding to the State of Hawaii title  
4                   to the public lands formerly held by the  
5                   United States, and mandating that those  
6                   lands be held in public trust for the better-  
7                   ment of the conditions of Native Hawai-  
8                   ians; and

9                   (ii) transferring the United States' re-  
10                  sponsibility for the administration of the  
11                  Hawaiian Home Lands to the State of Ha-  
12                  waii, but retaining the authority to enforce  
13                  the trust, including the exclusive right of  
14                  the United States to consent to any actions  
15                  affecting the lands which comprise the cor-  
16                  pus of the trust and any amendments to  
17                  the Hawaiian Homes Commission Act,  
18                  1920 (42 Stat. 108, chapter 42) that are  
19                  enacted by the legislature of the State of  
20                  Hawaii affecting the beneficiaries under  
21                  the Act;

22                  (19) the United States continually has recog-  
23                  nized and reaffirmed that—

24                   (A) Native Hawaiians have a cultural, his-  
25                   toric, and land-based link to the aboriginal, na-

1           tive people who exercised sovereignty over the  
2           Hawaiian Islands;

3           (B) Native Hawaiians have never relin-  
4           quished their claims to sovereignty or their sov-  
5           ereign lands;

6           (C) the United States extends services to  
7           Native Hawaiians because of their unique sta-  
8           tus as the aboriginal, native people of a once  
9           sovereign nation with whom the United States  
10          has a political and legal relationship; and

11          (D) the special trust relationship of Amer-  
12          ican Indians, Alaska Natives, and Native Ha-  
13          waiians to the United States arises out of their  
14          status as aboriginal, indigenous, native people  
15          of the United States.

16 **SEC. 2. DEFINITIONS.**

17       In this Act:

18           (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-  
19       PLE.—The term “aboriginal, indigenous, native peo-  
20       ple” means those people whom Congress has recog-  
21       nized as the original inhabitants of the lands and  
22       who exercised sovereignty prior to European contact  
23       in the areas that later became part of the United  
24       States;

1           (2) ADULT MEMBERS.—The term “adult mem-  
2       bers” means those Native Hawaiians who have at-  
3       tained the age of 18 at the time the Secretary pub-  
4       lishes the initial roll in the Federal Register, as pro-  
5       vided in section 7(a)(4) of this Act.

6           (3) APOLOGY RESOLUTION.—The term “Apol-  
7       ogy Resolution” means Public Law 103–150 (107  
8       Stat. 1510), a joint resolution offering an apology to  
9       Native Hawaiians on behalf of the United States for  
10      the participation of agents of the United States in  
11      the January 17, 1893 overthrow of the Kingdom of  
12      Hawaii.

13          (4) COMMISSION.—The term “Commission”  
14      means the commission established in section 7 of  
15      this Act to certify that the adult members of the Na-  
16      tive Hawaiian community contained on the roll de-  
17      veloped under that section meet the definition of Na-  
18      tive Hawaiian, as defined in paragraph (6)(A).

19          (5) INDIGENOUS, NATIVE PEOPLE.—The term  
20      “indigenous, native people” means the lineal de-  
21      scendants of the aboriginal, indigenous, native peo-  
22      ple of the United States.

23          (6) NATIVE HAWAIIAN.—

24              (A) Prior to the recognition by the United  
25      States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,  
2 the term "Native Hawaiian" means the indige-  
3 nous, native people of Hawaii who are the lineal  
4 descendants of the aboriginal, indigenous, na-  
5 tive people who resided in the islands that now  
6 comprise the State of Hawaii on January 1,  
7 1893, and who occupied and exercised sov-  
8 ereignty in the Hawaiian archipelago, including  
9 the area that now constitutes the State of Ha-  
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)  
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-  
16 cates or other vital statistics records;

17 (B) Following the recognition by the  
18 United States of the Native Hawaiian govern-  
19 ing body under section 7(d) of this Act, the  
20 term "Native Hawaiian" shall have the mean-  
21 ing given to such term in the organic governing  
22 documents of the Native Hawaiian governing  
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The  
25 term "Native Hawaiian governing body" means the

1 adult members of the governing body of the Native  
2 Hawaiian people that is recognized by the United  
3 States under the authority of section 7(d) of this  
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING  
6 COUNCIL.—The term “Native Hawaiian Interim  
7 Governing Council” means the interim governing  
8 council that is authorized to exercise the powers and  
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that  
11 is developed under the authority of section 7(a) of  
12 this Act.

13 (10) SECRETARY.—The term “Secretary”  
14 means the Secretary of the Department of the Inte-  
15 rior.

16 (11) TASK FORCE.—The term “Task Force”  
17 means the Native Hawaiian Interagency Task Force  
18 established under the authority of section 6 of this  
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct  
23 aboriginal, indigenous, native people, with whom the  
24 United States has a political and legal relationship;

1           (2) the United States has a special trust rela-  
2           tionship to promote the welfare of Native Hawaiians;

3           (3) Congress possesses the authority under the  
4           Constitution to enact legislation to address the con-  
5           ditions of Native Hawaiians and has exercised this  
6           authority through the enactment of—

7                   (A) the Hawaiian Homes Commission Act,  
8                   1920 (42 Stat. 108, chapter 42);

9                   (B) the Act entitled “An Act to provide for  
10           the admission of the State of Hawaii into the  
11           Union”, approved March 18, 1959 (Public Law  
12           86-3; 73 Stat. 4); and

13                   (C) more than 150 other Federal laws ad-  
14           dressing the conditions of Native Hawaiians;

15           (4) Native Hawaiians have—

16                   (A) an inherent right to autonomy in their  
17           internal affairs;

18                   (B) an inherent right of self-determination  
19           and self-governance; and

20                   (C) the right to reorganize a Native Ha-  
21           waiian governing body; and

22           (5) the United States shall continue to engage  
23           in a process of reconciliation and political relations  
24           with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**  
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) IN GENERAL.—There is established within the  
4 Office of the Secretary of the Department of the Interior  
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) DUTIES OF THE OFFICE.—The Office of Special  
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust  
9 relationship between the Native Hawaiian people  
10 and the United States through the Secretary, and  
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-  
13 ian governing body by the United States as provided  
14 for in section 7(d) of this Act, effectuate and coordi-  
15 nate the special trust relationship between the Na-  
16 tive Hawaiian governing body and the United States  
17 through the Secretary, and with all other Federal  
18 agencies;

19 (3) fully integrate the principle and practice of  
20 meaningful, regular, and appropriate consultation  
21 with the Native Hawaiian people by providing timely  
22 notice to, and consulting with the Native Hawaiian  
23 people prior to taking any actions that may have the  
24 potential to significantly or uniquely affect Native  
25 Hawaiian resources, rights, or lands, and upon the  
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-  
2 grate the principle and practice of meaningful, regu-  
3 lar, and appropriate consultation with the Native  
4 Hawaiian governing body by providing timely notice  
5 to, and consulting with the Native Hawaiian people  
6 prior to taking any actions that may have the poten-  
7 tial to significantly affect Native Hawaiian re-  
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-  
10 agency Task Force, other Federal agencies, and with  
11 relevant agencies of the State of Hawaii on policies,  
12 practices, and proposed actions affecting Native Ha-  
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-  
15 mittal to the Committee on Indian Affairs of the  
16 Senate, the Committee on Energy and Natural Re-  
17 sources of the Senate, and the Committee on Re-  
18 sources of the House of Representatives of an an-  
19 nual report detailing the activities of the Interagency  
20 Task Force established under section 6 of this Act  
21 that are undertaken with respect to the continuing  
22 process of reconciliation and to effect meaningful  
23 consultation with the Native Hawaiian people and  
24 the Native Hawaiian governing body and providing  
25 recommendations for any necessary changes to exist-



1 ing Federal statutes or regulations promulgated  
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of  
4 reconciliation with the Native Hawaiian people, and  
5 upon the recognition of the Native Hawaiian govern-  
6 ing body by the United States as provided for in sec-  
7 tion 7(d) of this Act, be responsible for continuing  
8 the process of reconciliation with the Native Hawai-  
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-  
11 tating a process for self-determination, including but  
12 not limited to the provision of technical assistance in  
13 the development of the roll under section 7(a) of this  
14 Act, the organization of the Native Hawaiian In-  
15 terim Governing Council as provided for in section  
16 7(b) of this Act, and the reorganization of the Na-  
17 tive Hawaiian governing body as provided for in sec-  
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate  
22 official within the Department of Justice to assist the Of-  
23 fice of the Special Trustee for Native Hawaiian Affairs  
24 in the implementation and protection of the rights of Na-  
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the  
2 Native Hawaiian governing body as provided for in section  
3 7(d) of this Act, in the implementation and protection of  
4 the rights of the Native Hawaiian governing body and its  
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-  
8 agency task force to be known as the “Native Hawaiian  
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-  
11 posed of officials, to be appointed by the President,  
12 from—

13 (1) each Federal agency that establishes or im-  
14 plements policies that affect Native Hawaiians or  
15 whose actions may significantly or uniquely impact  
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native  
18 Hawaiian Affairs established under section 4 of this  
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-  
22 rior and the Department of Justice shall serve as the lead  
23 agencies of the Task Force, and meetings of the Task  
24 Force shall be convened at the request of the lead agen-  
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of  
2 the Office of Special Trustee for Native Hawaiian Affairs  
3 established under the authority of section 4 of this Act  
4 and the Attorney General's designee under the authority  
5 of section 5 of this Act shall serve as co-chairs of the Task  
6 Force.

7 (e) DUTIES.—The primary responsibilities of the  
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-  
10 fect Native Hawaiians or actions by any agency or  
11 agencies of the Federal Government which may sig-  
12 nificantly or uniquely impact on Native Hawaiian re-  
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops  
15 a policy on consultation with the Native Hawaiian  
16 people, and upon recognition of the Native Hawaiian  
17 governing body by the United States as provided in  
18 section 7(d) of this Act, consultation with the Native  
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal  
21 agency in the development of the report to Congress  
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**  
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**  
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**  
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**  
5 **TERIM GOVERNING COUNCIL AND A NATIVE**  
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**  
7 **RECOGNITION OF THE NATIVE HAWAIIAN**  
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-  
11 bers of the Native Hawaiian community who wish to  
12 participate in the reorganization of a Native Hawai-  
13 ian governing body shall prepare a roll for the pur-  
14 pose of the organization of a Native Hawaiian In-  
15 terim Governing Council. The roll shall include the  
16 names of—

17 (A) the adult members of the Native Ha-  
18 waiian community who wish to become mem-  
19 bers of a Native Hawaiian governing body and  
20 who are the lineal descendants of the aborigi-  
21 nal, indigenous, native people who resided in  
22 the islands that now comprise the State of Ha-  
23 waii on January 1, 1893, and who occupied and  
24 exercised sovereignty in the Hawaiian archipel-  
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-  
2 ited to)—

- 3 (i) genealogical records;  
4 (ii) Native Hawaiian kupuna (elders)  
5 verification or affidavits;  
6 (iii) church or census records; or  
7 (iv) government birth or death certifi-  
8 cates or other vital statistics records; and  
9 (B) the children of the adult members list-  
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to  
13 be established a Commission to be composed of  
14 9 members for the purpose of certifying that  
15 the adult members of the Native Hawaiian com-  
16 munity on the roll meet the definition of Native  
17 Hawaiian, as defined in section 2(6)(A) of this  
18 Act. The members of the Commission shall have  
19 expertise in the certification of Native Hawaiian  
20 ancestry.

21 (B) CERTIFICATION.—The Commission  
22 shall certify to the Secretary that the individ-  
23 uals listed on the roll developed under the au-  
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and  
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall  
4 promptly provide notice to the Secretary if any of  
5 the individuals listed on the roll should be removed  
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-  
8 ceipt by the Secretary of the roll developed under  
9 the authority of this subsection and certified by the  
10 Commission under the authority of paragraph (2),  
11 the Secretary shall certify that the roll is consistent  
12 with applicable Federal law by publishing the roll in  
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication  
15 of the roll developed under the authority of this sub-  
16 section shall be for the purpose of providing any  
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the  
19 roll the name of an individual who meets the  
20 definition of Native Hawaiian, as defined in  
21 section 2(6)(A) of this Act, and who is not list-  
22 ed on the roll; or

23 (B) petition the Secretary to remove from  
24 the roll the name of an individual who does not  
25 meet such definition.

1           (6) DEADLINE FOR PETITIONS.—Any petition  
2       described in paragraph (5) shall be filed with the  
3       Secretary within 90 days of the date of the publica-  
4       tion of the roll in the Federal Register, as author-  
5       ized under paragraph (4).

6           (7) CERTIFICATION OF ADDITIONAL NATIVE  
7       HAWAIIANS FOR INCLUSION ON THE ROLL.—

8           (A) SUBMISSION.—Within 30 days of re-  
9       ceiving a petition to add the name of an individ-  
10      ual to the roll, the Secretary shall submit the  
11      name of each individual who is the subject of a  
12      petition to add his or her name to the roll to  
13      the Commission for certification that the indi-  
14      vidual meets the definition of Native Hawaiian,  
15      as defined in section 2(6)(A) of this Act.

16          (B) CERTIFICATION.—Within 30 days of  
17      receiving a petition from the Secretary to have  
18      a name added to or removed from the roll, the  
19      Commission shall certify to the Secretary  
20      that—

21           (i) the individual meets the definition  
22      of Native Hawaiian, as defined in section  
23      2(6)(A) of this Act; or

1 (ii) the individual does not meet the  
2 definition of Native Hawaiian, as so de-  
3 fined.

4 Upon such certification, the Secretary shall add  
5 or remove the name of the individual on the  
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall  
9 conduct a hearing on the record within 45 days  
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission  
12 that an individual does not meet the defini-  
13 tion of Native Hawaiian, as defined in sec-  
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of  
16 any individual listed on the roll submitted  
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-  
19 ducted in accordance with this paragraph, the  
20 Secretary may receive testimony from the peti-  
21 tioner, a representative of the Commission, the  
22 individual whose name is the subject of the pe-  
23 tition, and any other individuals who may have  
24 the necessary expertise to provide the Secretary  
25 with relevant information regarding whether the



1 individual whose name is the subject of a peti-  
2 tion meets the definition of Native Hawaiian, as  
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30  
5 days of the date of the conclusion of the hear-  
6 ing conducted in accordance with this para-  
7 graph, the Secretary shall make a determina-  
8 tion regarding whether the individual whose  
9 name is the subject of a petition meets the defi-  
10 nition of Native Hawaiian, as defined in section  
11 2(6)(A) of this Act. Such a determination shall  
12 be a final determination for purposes of judicial  
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United  
16 States District Court for the District of Hawaii  
17 shall have jurisdiction to review the record of  
18 the decision developed by the Secretary and the  
19 Secretary's final determination under para-  
20 graph (8) and shall make a final judgment re-  
21 garding such determination.

22 (B) NOTICE.—If the district court deter-  
23 mines that an individual's name should be  
24 added to the roll because that individual meets  
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-  
2 ual's name should be removed from the roll be-  
3 cause that individual does not meet such defini-  
4 tion, the district court shall so advise the Sec-  
5 retary and the Secretary shall add or remove  
6 the individual's name from the roll, consistent  
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except  
9 for those petitions which remain the subject of judi-  
10 cial review under the authority of paragraph (9), the  
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-  
13 ister within 290 days of the receipt by the Sec-  
14 retary of the roll prepared under the authority  
15 of paragraph (1); and

16 (B) subsequently publish in the Federal  
17 Register the names of any individuals that the  
18 district court directs be added or removed from  
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-  
21 tion of the final roll shall serve as the basis for the  
22 eligibility of adult members listed on the roll to par-  
23 ticipate in all referenda and elections associated with  
24 the organization of a Native Hawaiian Interim Gov-  
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-  
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within  
5 90 days of the date of the publication of the  
6 final roll in the Federal Register, the Secretary  
7 shall announce the date of a general meeting of  
8 the adult members of those listed on the roll to  
9 nominate candidates from among the adult  
10 members listed on the roll for election to the  
11 Native Hawaiian Interim Governing Council.  
12 The criteria for candidates to serve on the Na-  
13 tive Hawaiian Interim Governing Council shall  
14 be developed by the adult members listed on the  
15 roll at the general meeting. The general meet-  
16 ing may consist of meetings on each island or  
17 at such sites as to secure the maximum partici-  
18 pation of the adult members listed on the roll.  
19 Such general meeting (or meetings) shall be  
20 held within 30 days of the Secretary's an-  
21 nouncement.

22 (B) ELECTION.—Within 45 days of the  
23 general meeting (or meetings), the Secretary  
24 shall assist the Native Hawaiian community in  
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-  
2 bership of the Native Hawaiian Interim Govern-  
3 ing Council from among the nominees submit-  
4 ted to the Secretary from the general meeting.  
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-  
7 prove the Native Hawaiian Interim Governing  
8 Council elected pursuant to this subsection if  
9 the requirements of this section relating to the  
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian  
13 Interim Governing Council shall represent those  
14 on the roll in the implementation of this Act  
15 and shall have no powers other than those given  
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian  
18 Interim Governing Council shall have no power  
19 or authority under this Act after the time which  
20 the duly elected officers of the Native Hawaiian  
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian  
24 Interim Governing Council shall conduct a ref-  
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited  
2 to) the following:

3 (i) The proposed elements of the or-  
4 ganic governing documents of a Native  
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-  
7 ties to be exercised by a Native Hawaiian  
8 governing body, as well as the proposed  
9 privileges and immunities of a Native Ha-  
10 waiian governing body.

11 (iii) The proposed civil rights and pro-  
12 tection of such rights of the members of a  
13 Native Hawaiian governing body and all  
14 persons subject to the authority of a Na-  
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-  
17 ING DOCUMENTS.—Based upon the referendum  
18 authorized in subparagraph (A), the Native Ha-  
19 waiian Interim Governing Council shall develop  
20 proposed organic governing documents for a  
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall  
23 distribute to all adult members of those listed  
24 on the roll, a copy of the proposed organic gov-  
25 erning documents, as drafted by the Native Ha-

1       Hawaiian Interim Governing Council, along with a  
2       brief impartial description of the proposed or-  
3       ganic governing documents.

4               (D) CONSULTATION.—The Native Hawai-  
5       ian Interim Governing Council shall freely con-  
6       sult with those listed on the roll concerning the  
7       text and description of the proposed organic  
8       governing documents.

9       (4) ELECTIONS.—

10            (A) IN GENERAL.—Upon the request of  
11       the Native Hawaiian Interim Governing Coun-  
12       cil, the Secretary shall hold an election for the  
13       purpose of ratifying the proposed organic gov-  
14       erning documents. If the Secretary fails to act  
15       within 45 days of the request by the Council,  
16       the Council is authorized to conduct the elec-  
17       tion.

18            (B) FAILURE TO ADOPT GOVERNING DOCU-  
19       MENTS.—If the proposed organic governing  
20       documents are not adopted by a majority vote  
21       of the adult members listed on the roll, the Na-  
22       tive Hawaiian Interim Governing Council shall  
23       consult with the adult members listed on the  
24       roll to determine which elements of the pro-  
25       posed organic governing documents were found

1 to be unacceptable, and based upon such con-  
2 sultation, the Council shall propose changes to  
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the  
5 Native Hawaiian Interim Governing Council,  
6 the Secretary shall hold a second election for  
7 the purpose of ratifying the proposed organic  
8 governing documents. If the Secretary fails to  
9 act within 45 days of the request by the Coun-  
10 cil, the Council is authorized to conduct the sec-  
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-  
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of  
15 the Native Hawaiian governing body of the indige-  
16 nous, native people of Hawaii to organize for its  
17 common welfare, and to adopt appropriate organic  
18 governing documents is hereby recognized by the  
19 United States.

20 (2) RATIFICATION.—The organic governing  
21 documents of the Native Hawaiian governing body  
22 shall become effective when ratified by a majority  
23 vote of the adult members listed on the roll, and ap-  
24 proved by the Secretary upon the Secretary's deter-  
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-  
 2 cial trust relationship between the United States and  
 3 its native people. If the Secretary fails to make such  
 4 a determination within 45 days of the ratification of  
 5 the organic governing documents by the adult mem-  
 6 bers listed on the roll, the organic governing docu-  
 7 ments shall be deemed to have been approved by the  
 8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—  
 10 Within 45 days after the Secretary has approved the  
 11 organic governing documents or the organic govern-  
 12 ing documents are deemed approved, the Secretary  
 13 shall assist the Native Hawaiian Interim Governing  
 14 Council in holding an election by secret ballot for the  
 15 purpose of determining the individuals who will serve  
 16 as governing body officers as provided in the organic  
 17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of  
 19 this initial election and notwithstanding any provi-  
 20 sion in the organic governing documents to the con-  
 21 trary, absentee balloting shall be permitted and all  
 22 adult members of the Native Hawaiian governing  
 23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections  
 25 of governing body officers shall be conducted as pro-



1 vided for in the organic governing documents and  
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-  
4 MENTS.—When ratified by a majority vote of the  
5 adult members of those listed on the roll, the organic  
6 governing documents shall be revocable by an elec-  
7 tion open to the adult members of the Native Ha-  
8 waiian governing body, and amendments to the or-  
9 ganic governing documents may be ratified by the  
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-  
12 dition to all powers vested in the Native Hawaiian  
13 governing body by the duly ratified organic govern-  
14 ing documents, the organic governing documents  
15 shall also vest in the Native Hawaiian governing  
16 body the rights and powers to—

17 (A) exercise those governmental authorities  
18 that are recognized by the United States as the  
19 powers and authorities that are exercised by  
20 other governments representing the indigenous,  
21 native people of the United States;

22 (B) provide for the protection of the civil  
23 rights of the members of the Native Hawaiian  
24 governing body and all persons subject to the  
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian  
2 governing body exercises its authority consistent  
3 with the requirements of section 202 of the Act  
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or  
6 encumbrance of lands, interests in lands, or  
7 other assets of the Native Hawaiian governing  
8 body without the consent of the Native Hawai-  
9 ian governing body;

10 (D) determine the membership in the Na-  
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and  
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other  
16 provision of law, upon the approval by the Secretary  
17 of the organic governing documents of the Native  
18 Hawaiian governing body and the election of officers  
19 of the Native Hawaiian governing body, Federal rec-  
20 ognition is hereby extended to the Native Hawaiian  
21 governing body as the representative governing body  
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-  
24 LEGES.—Nothing contained in this Act shall dimin-  
25 ish, alter, or amend any existing rights or privileges

1       enjoyed by the Native Hawaiian people which are  
2       not inconsistent with the provisions of this Act.

3       (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-  
4       ERNING BODY.—

5           (1) CHARTER OF INCORPORATION.—Upon peti-  
6       tion of the Native Hawaiian governing body, the  
7       Secretary may issue a charter of incorporation to  
8       the Native Hawaiian governing body. Upon the  
9       issuance of such charter of incorporation, the Native  
10      Hawaiian governing body shall have the same status  
11      under Federal law when acting in its corporate ca-  
12      pacity as the status of Indian tribes that have been  
13      issued a charter of incorporation under the authority  
14      of section 17 of the Indian Reorganization Act (25  
15      U.S.C. 477).

16          (2) ENUMERATED POWERS.—Such charter may  
17      authorize the incorporated Native Hawaiian govern-  
18      ing body to exercise the power to purchase, take by  
19      gift, bequest, or otherwise, own, hold, manage, oper-  
20      ate, and dispose of property of every description,  
21      real and personal, including the power to purchase  
22      lands and to issue an exchange of interests in cor-  
23      porate property, and such further powers as may be  
24      incidental to the conduct of corporate business, and  
25      that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated such sums as  
3 may be necessary to carry out the activities authorized in  
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
6 **THORITY; NEGOTIATIONS.**

7       (a) REAFFIRMATION.—The delegation by the United  
8 States of authority to the State of Hawaii to address the  
9 conditions of Native Hawaiians contained in the Act enti-  
10 tled “An Act to provide for the admission of the State  
11 of Hawaii into the Union” approved March 18, 1959  
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13       (b) NEGOTIATIONS.—Upon the Federal recognition  
14 of the Native Hawaiian governing body pursuant to sec-  
15 tion 7(d) of this Act, the United States is authorized to  
16 negotiate and enter into an agreement with the State of  
17 Hawaii and the Native Hawaiian governing body regard-  
18 ing the transfer of lands, resources, and assets dedicated  
19 to Native Hawaiian use under existing law as in effect  
20 on the date of enactment of this Act to the Native Hawai-  
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23       Nothing in this Act is intended to serve as a settle-  
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2       The Secretary is authorized to make such rules and  
3 regulations and such delegations of authority as the Sec-  
4 retary deems necessary to carry out the provisions of this  
5 Act.

6 **SEC. 12. SEVERABILITY.**

7       In the event that any section or provision of this Act,  
8 or any amendment made by this Act is held invalid, it  
9 is the intent of Congress that the remaining sections or  
10 provisions of this Act, and the amendments made by this  
11 Act, shall continue in full force and effect.

○

106TH CONGRESS  
2D SESSION

# H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. FINDINGS.**

4       Congress finds that—

5               (1) the Constitution vests Congress with the au-  
6       thority to address the conditions of the indigenous,  
7       native people of the United States;

8               (2) Native Hawaiians, the native people of the  
9       State of Hawaii are indigenous, native people of the  
10      United States;

1           (3) the United States has a special trust rela-  
2           tionship to promote the welfare of the native people  
3           of the United States, including Native Hawaiians;

4           (4) under the treaty-making power of the  
5           United States, Congress exercised its constitutional  
6           authority to confirm a treaty between the United  
7           States and the government that represented the Ha-  
8           waiian people, and from 1826 until 1893, the United  
9           States recognized the independence of the Kingdom  
10          of Hawaii, extended full diplomatic recognition to  
11          the Hawaiian Government, and entered into treaties  
12          and conventions with the Hawaiian monarchs to gov-  
13          ern commerce and navigation in 1826, 1842, 1849,  
14          1875, and 1887;

15          (5) pursuant to the provisions of the Hawaiian  
16          Homes Commission Act, 1920 (42 Stat. 108, chap-  
17          ter 42), the United States set aside 200,000 acres  
18          of land in the Federal territory that later became  
19          the State of Hawaii in order to establish a homeland  
20          for the native people of Hawaii, Native Hawaiians;

21          (6) by setting aside 200,000 acres of land for  
22          Native Hawaiian homesteads and farms, the Act as-  
23          sists the Native Hawaiian community in maintaining  
24          distinct native settlements throughout the State of  
25          Hawaii;

1           (7) approximately 6,800 Native Hawaiian les-  
2       sees and their family members reside on Hawaiian  
3       Home Lands and approximately 18,000 Native Ha-  
4       waiians who are eligible to reside on the Home  
5       Lands are on a waiting list to receive assignments  
6       of land;

7           (8) the Hawaiian Home Lands continue to pro-  
8       vide an important foundation for the ability of the  
9       Native Hawaiian community to maintain the prac-  
10      tice of Native Hawaiian culture, language, and tradi-  
11      tions, and Native Hawaiians have maintained other  
12      distinctly native areas in Hawaii;

13          (9) on November 23, 1993, Public Law 103-  
14      150 (107 Stat. 1510) (commonly known as the Apol-  
15      ogy Resolution) was enacted into law, extending an  
16      apology on behalf of the United States to the Native  
17      people of Hawaii for the United States role in the  
18      overthrow of the Kingdom of Hawaii;

19          (10) the Apology Resolution acknowledges that  
20      the overthrow of the Kingdom of Hawaii occurred  
21      with the active participation of agents and citizens  
22      of the United States and further acknowledges that  
23      the Native Hawaiian people never directly relin-  
24      quished their claims to their inherent sovereignty as  
25      a people over their national lands to the United



1 States, either through their monarchy or through a  
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-  
4 mitment of Congress and the President to acknowl-  
5 edge the ramifications of the overthrow of the King-  
6 dom of Hawaii and to support reconciliation efforts  
7 between the United States and Native Hawaiians;  
8 and to have Congress and the President, through the  
9 President's designated officials, consult with Native  
10 Hawaiians on the reconciliation process as called for  
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-  
13 ernment, Native Hawaiians have continued to main-  
14 tain their separate identity as a distinct native com-  
15 munity through the formation of cultural, social, and  
16 political institutions, and to give expression to their  
17 rights as native people to self-determination and  
18 self-governance as evidenced through their participa-  
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct  
21 Native Hawaiian community through the provision  
22 of governmental services to Native Hawaiians, in-  
23 cluding the provision of health care services, edu-  
24 cational programs, employment and training pro-  
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,  
2 native language immersion programs and native lan-  
3 guage immersion schools from kindergarten through  
4 high school, as well as college and master's degree  
5 programs in native language immersion instruction,  
6 and traditional justice programs, and by continuing  
7 their efforts to enhance Native Hawaiian self-deter-  
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in  
10 Native Hawaiian cultural practices, traditional agri-  
11 cultural methods, fishing and subsistence practices,  
12 maintenance of cultural use areas and sacred sites,  
13 protection of burial sites, and the exercise of their  
14 traditional rights to gather medicinal plants and  
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-  
17 serve, develop, and transmit to future Native Hawai-  
18 ian generations their ancestral lands and Native Ha-  
19 waiian political and cultural identity in accordance  
20 with their traditions, beliefs, customs and practices,  
21 language, and social and political institutions, and to  
22 achieve greater self-determination over their own af-  
23 fairs;

24 (16) this Act responds to the desire of the Na-  
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of  
2 Federal law for the Native Hawaiian people to exer-  
3 cise their inherent rights as a distinct aboriginal, in-  
4 digenous, native community to reorganize a Native  
5 Hawaiian governing body for the purpose of giving  
6 expression to their rights as native people to self-de-  
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-  
10 sibility for the welfare of the native peoples of  
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-  
13 ians as a distinct indigenous group within the  
14 scope of its Indian affairs power, and has en-  
15 acted dozens of statutes on their behalf pursu-  
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-  
18 thority to administer a portion of the federal  
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-  
21 affirmed the special trust relationship with the Na-  
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An  
24 Act to provide for the admission of the State of

1           Hawaii into the Union", approved March 18,  
2           1959 (Public Law 86-3; 73 Stat. 4) by—

3                   (i) ceding to the State of Hawaii title  
4                   to the public lands formerly held by the  
5                   United States, and mandating that those  
6                   lands be held in public trust for the better-  
7                   ment of the conditions of Native Hawai-  
8                   ians; and

9                   (ii) transferring the United States re-  
10                  sponsibility for the administration of the  
11                  Hawaiian Home Lands to the State of Ha-  
12                  waii, but retaining the authority to enforce  
13                  the trust, including the exclusive right of  
14                  the United States to consent to any actions  
15                  affecting the lands which comprise the cor-  
16                  pus of the trust and any amendments to  
17                  the Hawaiian Homes Commission Act,  
18                  1920 (42 Stat. 108, chapter 42) that are  
19                  enacted by the legislature of the State of  
20                  Hawaii affecting the beneficiaries under  
21                  the Act;

22                  (19) the United States continually has recog-  
23                  nized and reaffirmed that—

24                   (A) Native Hawaiians have a cultural, his-  
25                   toric, and land-based link to the aboriginal, na-

1           tive people who exercised sovereignty over the  
2           Hawaiian Islands;

3           (B) Native Hawaiians have never relin-  
4           quished their claims to sovereignty or their sov-  
5           ereign lands;

6           (C) the United States extends services to  
7           Native Hawaiians because of their unique sta-  
8           tus as the aboriginal, native people of a once  
9           sovereign nation with whom the United States  
10          has a political and legal relationship; and

11          (D) the special trust relationship of Amer-  
12          ican Indians, Alaska Natives, and Native Ha-  
13          waiians to the United States arises out of their  
14          status as aboriginal, indigenous, native people  
15          of the United States.

16 **SEC. 2. DEFINITIONS.**

17       In this Act:

18           (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**  
19       **PLE.**—The term “aboriginal, indigenous, native peo-  
20       ple” means those people whom Congress has recog-  
21       nized as the original inhabitants of the lands and  
22       who exercised sovereignty prior to European contact  
23       in the areas that later became part of the United  
24       States;

1           (2) ADULT MEMBERS.—The term “adult mem-  
2       bers” means those Native Hawaiians who have at-  
3       tained the age of 18 at the time the Secretary pub-  
4       lishes the initial roll in the Federal Register, as pro-  
5       vided in section 7(a)(4) of this Act.

6           (3) APOLOGY RESOLUTION.—The term “Apol-  
7       ogy Resolution” means Public Law 103–150 (107  
8       Stat. 1510), a joint resolution offering an apology to  
9       Native Hawaiians on behalf of the United States for  
10      the participation of agents of the United States in  
11      the January 17, 1893 overthrow of the Kingdom of  
12      Hawaii.

13          (4) COMMISSION.—The term “Commission”  
14      means the commission established in section 7 of  
15      this Act to certify that the adult members of the Na-  
16      tive Hawaiian community contained on the roll de-  
17      veloped under that section meet the definition of Na-  
18      tive Hawaiian, as defined in paragraph (6)(A).

19          (5) INDIGENOUS, NATIVE PEOPLE.—The term  
20      “indigenous, native people” means the lineal de-  
21      scendants of the aboriginal, indigenous, native peo-  
22      ple of the United States.

23          (6) NATIVE HAWAIIAN.—

24              (A) Prior to the recognition by the United  
25      States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,  
2 the term “Native Hawaiian” means the indige-  
3 nous, native people of Hawaii who are the lineal  
4 descendants of the aboriginal, indigenous, na-  
5 tive people who resided in the islands that now  
6 comprise the State of Hawaii on January 1,  
7 1893, and who occupied and exercised sov-  
8 ereignty in the Hawaiian archipelago, including  
9 the area that now constitutes the State of Ha-  
10 waii, as evidenced by (but not limited to)—

- 11 (i) genealogical records;  
12 (ii) Native Hawaiian kupuna (elders)  
13 verification or affidavits;  
14 (iii) church or census records; or  
15 (iv) government birth or death certifi-  
16 cates or other vital statistics records;

17 (B) Following the recognition by the  
18 United States of the Native Hawaiian govern-  
19 ing body under section 7(d) of this Act, the  
20 term “Native Hawaiian” shall have the mean-  
21 ing given to such term in the organic governing  
22 documents of the Native Hawaiian governing  
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The  
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native  
2 Hawaiian people that is recognized by the United  
3 States under the authority of section 7(d) of this  
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING  
6 COUNCIL.—The term “Native Hawaiian Interim  
7 Governing Council” means the interim governing  
8 council that is authorized to exercise the powers and  
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that  
11 is developed under the authority of section 7(a) of  
12 this Act.

13 (10) SECRETARY.—The term “Secretary”  
14 means the Secretary of the Department of the Inte-  
15 rior.

16 (11) TASK FORCE.—The term “Task Force”  
17 means the Native Hawaiian Interagency Task Force  
18 established under the authority of section 6 of this  
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct  
23 aboriginal, indigenous, native people, with whom the  
24 United States has a political and legal relationship;



1           (2) the United States has a special trust rela-  
2           tionship to promote the welfare of Native Hawaiians;

3           (3) Congress possesses the authority under the  
4           Constitution to enact legislation to address the con-  
5           ditions of Native Hawaiians and has exercised this  
6           authority through the enactment of—

7           (A) the Hawaiian Homes Commission Act,  
8           1920 (42 Stat. 108, chapter 42);

9           (B) the Act entitled “An Act to provide for  
10          the admission of the State of Hawaii into the  
11          Union”, approved March 18, 1959 (Public Law  
12          86–3; 73 Stat. 4); and

13          (C) more than 150 other Federal laws ad-  
14          dressing the conditions of Native Hawaiians;

15          (4) Native Hawaiians have—

16                (A) an inherent right to autonomy in their  
17                internal affairs;

18                (B) an inherent right of self-determination  
19                and self-governance; and

20                (C) the right to reorganize a Native Ha-  
21                waiian governing body; and

22          (5) the United States shall continue to engage  
23          in a process of reconciliation and political relations  
24          with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**  
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the  
4 Office of the Secretary of the Department of the Interior  
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special  
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust  
9 relationship between the Native Hawaiian people  
10 and the United States through the Secretary, and  
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-  
13 ian governing body by the United States as provided  
14 for in section 7(d) of this Act, effectuate and coordi-  
15 nate the special trust relationship between the Na-  
16 tive Hawaiian governing body and the United States  
17 through the Secretary, and with all other Federal  
18 agencies;

19 (3) fully integrate the principle and practice of  
20 meaningful, regular, and appropriate consultation  
21 with the Native Hawaiian people by providing timely  
22 notice to, and consulting with the Native Hawaiian  
23 people prior to taking any actions that may have the  
24 potential to significantly or uniquely affect Native  
25 Hawaiian resources, rights, or lands, and upon the  
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-  
2 grate the principle and practice of meaningful, regu-  
3 lar, and appropriate consultation with the Native  
4 Hawaiian governing body by providing timely notice  
5 to, and consulting with the Native Hawaiian people  
6 prior to taking any actions that may have the poten-  
7 tial to significantly affect Native Hawaiian re-  
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-  
10 agency Task Force, other Federal agencies, and with  
11 relevant agencies of the State of Hawaii on policies,  
12 practices, and proposed actions affecting Native Ha-  
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-  
15 mittal to the Committee on Indian Affairs of the  
16 Senate, the Committee on Energy and Natural Re-  
17 sources of the Senate, and the Committee on Re-  
18 sources of the House of Representatives of an an-  
19 nual report detailing the activities of the Interagency  
20 Task Force established under section 6 of this Act  
21 that are undertaken with respect to the continuing  
22 process of reconciliation and to effect meaningful  
23 consultation with the Native Hawaiian people and  
24 the Native Hawaiian governing body and providing  
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated  
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of  
4 reconciliation with the Native Hawaiian people, and  
5 upon the recognition of the Native Hawaiian govern-  
6 ing body by the United States as provided for in sec-  
7 tion 7(d) of this Act, be responsible for continuing  
8 the process of reconciliation with the Native Hawai-  
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-  
11 tating a process for self-determination, including but  
12 not limited to the provision of technical assistance in  
13 the development of the roll under section 7(a) of this  
14 Act, the organization of the Native Hawaiian In-  
15 terim Governing Council as provided for in section  
16 7(b) of this Act, and the reorganization of the Na-  
17 tive Hawaiian governing body as provided for in sec-  
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate  
22 official within the Department of Justice to assist the Of-  
23 fice of the Special Trustee for Native Hawaiian Affairs  
24 in the implementation and protection of the rights of Na-  
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the  
2 Native Hawaiian governing body as provided for in section  
3 7(d) of this Act, in the implementation and protection of  
4 the rights of the Native Hawaiian governing body and its  
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-  
8 agency task force to be known as the “Native Hawaiian  
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-  
11 posed of officials, to be appointed by the President,  
12 from—

13 (1) each Federal agency that establishes or im-  
14 plements policies that affect Native Hawaiians or  
15 whose actions may significantly or uniquely impact  
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native  
18 Hawaiian Affairs established under section 4 of this  
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-  
22 rior and the Department of Justice shall serve as the lead  
23 agencies of the Task Force, and meetings of the Task  
24 Force shall be convened at the request of the lead agen-  
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of  
2 the Office of Special Trustee for Native Hawaiian Affairs  
3 established under the authority of section 4 of this Act  
4 and the Attorney General's designee under the authority  
5 of section 5 of this Act shall serve as co-chairs of the Task  
6 Force.

7 (e) DUTIES.—The primary responsibilities of the  
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-  
10 fect Native Hawaiians or actions by any agency or  
11 agencies of the Federal Government which may sig-  
12 nificantly or uniquely impact on Native Hawaiian re-  
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops  
15 a policy on consultation with the Native Hawaiian  
16 people, and upon recognition of the Native Hawaiian  
17 governing body by the United States as provided in  
18 section 7(d) of this Act, consultation with the Native  
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal  
21 agency in the development of the report to Congress  
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**  
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**  
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**  
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**  
5 **TERIM GOVERNING COUNCIL AND A NATIVE**  
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**  
7 **RECOGNITION OF THE NATIVE HAWAIIAN**  
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-  
11 bers of the Native Hawaiian community who wish to  
12 participate in the reorganization of a Native Hawai-  
13 ian governing body shall prepare a roll for the pur-  
14 pose of the organization of a Native Hawaiian In-  
15 terim Governing Council. The roll shall include the  
16 names of—

17 (A) the adult members of the Native Ha-  
18 waiian community who wish to become mem-  
19 bers of a Native Hawaiian governing body and  
20 who are the lineal descendants of the aborigi-  
21 nal, indigenous, native people who resided in  
22 the islands that now comprise the State of Ha-  
23 waii on January 1, 1893, and who occupied and  
24 exercised sovereignty in the Hawaiian archipel-  
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-  
2 ited to)—

- 3 (i) genealogical records;  
4 (ii) Native Hawaiian kupuna (elders)  
5 verification or affidavits;  
6 (iii) church or census records; or  
7 (iv) government birth or death certifi-  
8 cates or other vital statistics records; and  
9 (B) the children of the adult members list-  
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to  
13 be established a Commission to be composed of  
14 9 members for the purpose of certifying that  
15 the adult members of the Native Hawaiian com-  
16 munity on the roll meet the definition of Native  
17 Hawaiian, as defined in section 2(6)(A) of this  
18 Act. The members of the Commission shall have  
19 expertise in the certification of Native Hawaiian  
20 ancestry.

21 (B) CERTIFICATION.—The Commission  
22 shall certify to the Secretary that the individ-  
23 uals listed on the roll developed under the au-  
24 thority of this subsection are Native Hawaiians,



1 as defined in section 2(6)(A) of this Act, and  
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall  
4 promptly provide notice to the Secretary if any of  
5 the individuals listed on the roll should be removed  
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-  
8 ceipt by the Secretary of the roll developed under  
9 the authority of this subsection and certified by the  
10 Commission under the authority of paragraph (2),  
11 the Secretary shall certify that the roll is consistent  
12 with applicable Federal law by publishing the roll in  
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication  
15 of the roll developed under the authority of this sub-  
16 section shall be for the purpose of providing any  
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the  
19 roll the name of an individual who meets the  
20 definition of Native Hawaiian, as defined in  
21 section 2(6)(A) of this Act, and who is not list-  
22 ed on the roll; or

23 (B) petition the Secretary to remove from  
24 the roll the name of an individual who does not  
25 meet such definition.

1           (6) DEADLINE FOR PETITIONS.—Any petition  
2       described in paragraph (5) shall be filed with the  
3       Secretary within 90 days of the date of the publica-  
4       tion of the roll in the Federal Register, as author-  
5       ized under paragraph (4).

6           (7) CERTIFICATION OF ADDITIONAL NATIVE  
7       HAWAIIANS FOR INCLUSION ON THE ROLL.—

8           (A) SUBMISSION.—Within 30 days of re-  
9       ceiving a petition to add the name of an individ-  
10      ual to the roll, the Secretary shall submit the  
11      name of each individual who is the subject of a  
12      petition to add his or her name to the roll to  
13      the Commission for certification that the indi-  
14      vidual meets the definition of Native Hawaiian,  
15      as defined in section 2(6)(A) of this Act.

16          (B) CERTIFICATION.—Within 30 days of  
17      receiving a petition from the Secretary to have  
18      a name added to or removed from the roll, the  
19      Commission shall certify to the Secretary  
20      that—

21                  (i) the individual meets the definition  
22                  of Native Hawaiian, as defined in section  
23                  2(6)(A) of this Act; or

1 (ii) the individual does not meet the  
2 definition of Native Hawaiian, as so de-  
3 fined.

4 Upon such certification, the Secretary shall add  
5 or remove the name of the individual on the  
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall  
9 conduct a hearing on the record within 45 days  
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission  
12 that an individual does not meet the defini-  
13 tion of Native Hawaiian, as defined in sec-  
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of  
16 any individual listed on the roll submitted  
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-  
19 ducted in accordance with this paragraph, the  
20 Secretary may receive testimony from the peti-  
21 tioner, a representative of the Commission, the  
22 individual whose name is the subject of the pe-  
23 tition, and any other individuals who may have  
24 the necessary expertise to provide the Secretary  
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-  
2 tion meets the definition of Native Hawaiian, as  
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30  
5 days of the date of the conclusion of the hear-  
6 ing conducted in accordance with this para-  
7 graph, the Secretary shall make a determina-  
8 tion regarding whether the individual whose  
9 name is the subject of a petition meets the defi-  
10 nition of Native Hawaiian, as defined in section  
11 2(6)(A) of this Act. Such a determination shall  
12 be a final determination for purposes of judicial  
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United  
16 States District Court for the District of Hawaii  
17 shall have jurisdiction to review the record of  
18 the decision developed by the Secretary and the  
19 Secretary's final determination under para-  
20 graph (8) and shall make a final judgment re-  
21 garding such determination.

22 (B) NOTICE.—If the district court deter-  
23 mines that an individual's name should be  
24 added to the roll because that individual meets  
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-  
2 ual's name should be removed from the roll be-  
3 cause that individual does not meet such defini-  
4 tion, the district court shall so advise the Sec-  
5 retary and the Secretary shall add or remove  
6 the individual's name from the roll, consistent  
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except  
9 for those petitions which remain the subject of judi-  
10 cial review under the authority of paragraph (9), the  
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-  
13 ister within 290 days of the receipt by the Sec-  
14 retary of the roll prepared under the authority  
15 of paragraph (1); and

16 (B) subsequently publish in the Federal  
17 Register the names of any individuals that the  
18 district court directs be added or removed from  
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-  
21 tion of the final roll shall serve as the basis for the  
22 eligibility of adult members listed on the roll to par-  
23 ticipate in all referenda and elections associated with  
24 the organization of a Native Hawaiian Interim Gov-  
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-  
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within  
5 90 days of the date of the publication of the  
6 final roll in the Federal Register, the Secretary  
7 shall announce the date of a general meeting of  
8 the adult members of those listed on the roll to  
9 nominate candidates from among the adult  
10 members listed on the roll for election to the  
11 Native Hawaiian Interim Governing Council.  
12 The criteria for candidates to serve on the Na-  
13 tive Hawaiian Interim Governing Council shall  
14 be developed by the adult members listed on the  
15 roll at the general meeting. The general meet-  
16 ing may consist of meetings on each island or  
17 at such sites as to secure the maximum partici-  
18 pation of the adult members listed on the roll.  
19 Such general meeting (or meetings) shall be  
20 held within 30 days of the Secretary's an-  
21 nouncement.

22 (B) ELECTION.—Within 45 days of the  
23 general meeting (or meetings), the Secretary  
24 shall assist the Native Hawaiian community in  
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-  
2 bership of the Native Hawaiian Interim Govern-  
3 ing Council from among the nominees submit-  
4 ted to the Secretary from the general meeting.  
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-  
7 prove the Native Hawaiian Interim Governing  
8 Council elected pursuant to this subsection if  
9 the requirements of this section relating to the  
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian  
13 Interim Governing Council shall represent those  
14 on the roll in the implementation of this Act  
15 and shall have no powers other than those given  
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian  
18 Interim Governing Council shall have no power  
19 or authority under this Act after the time which  
20 the duly elected officers of the Native Hawaiian  
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian  
24 Interim Governing Council shall conduct a ref-  
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited  
2 to) the following:

3 (i) The proposed elements of the or-  
4 ganic governing documents of a Native  
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-  
7 ties to be exercised by a Native Hawaiian  
8 governing body, as well as the proposed  
9 privileges and immunities of a Native Ha-  
10 waiian governing body.

11 (iii) The proposed civil rights and pro-  
12 tection of such rights of the members of a  
13 Native Hawaiian governing body and all  
14 persons subject to the authority of a Na-  
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-  
17 ING DOCUMENTS.—Based upon the referendum  
18 authorized in subparagraph (A), the Native Ha-  
19 waiian Interim Governing Council shall develop  
20 proposed organic governing documents for a  
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall  
23 distribute to all adult members of those listed  
24 on the roll, a copy of the proposed organic gov-  
25 erning documents, as drafted by the Native Ha-



1           waian Interim Governing Council, along with a  
2           brief impartial description of the proposed or-  
3           ganic governing documents.

4           (D) CONSULTATION.—The Native Hawai-  
5           ian Interim Governing Council shall freely con-  
6           sult with those listed on the roll concerning the  
7           text and description of the proposed organic  
8           governing documents.

9           (4) ELECTIONS.—

10           (A) IN GENERAL.—Upon the request of  
11           the Native Hawaiian Interim Governing Coun-  
12           cil, the Secretary shall hold an election for the  
13           purpose of ratifying the proposed organic gov-  
14           erning documents. If the Secretary fails to act  
15           within 45 days of the request by the Council,  
16           the Council is authorized to conduct the elec-  
17           tion.

18           (B) FAILURE TO ADOPT GOVERNING DOCU-  
19           MENTS.—If the proposed organic governing  
20           documents are not adopted by a majority vote  
21           of the adult members listed on the roll, the Na-  
22           tive Hawaiian Interim Governing Council shall  
23           consult with the adult members listed on the  
24           roll to determine which elements of the pro-  
25           posed organic governing documents were found

1 to be unacceptable, and based upon such con-  
2 sultation, the Council shall propose changes to  
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the  
5 Native Hawaiian Interim Governing Council,  
6 the Secretary shall hold a second election for  
7 the purpose of ratifying the proposed organic  
8 governing documents. If the Secretary fails to  
9 act within 45 days of the request by the Coun-  
10 cil, the Council is authorized to conduct the sec-  
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-  
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of  
15 the Native Hawaiian governing body of the indige-  
16 nous, native people of Hawaii to organize for its  
17 common welfare, and to adopt appropriate organic  
18 governing documents is hereby recognized by the  
19 United States.

20 (2) RATIFICATION.—The organic governing  
21 documents of the Native Hawaiian governing body  
22 shall become effective when ratified by a majority  
23 vote of the adult members listed on the roll, and ap-  
24 proved by the Secretary upon the Secretary's deter-  
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-  
2 cial trust relationship between the United States and  
3 its native people. If the Secretary fails to make such  
4 a determination within 45 days of the ratification of  
5 the organic governing documents by the adult mem-  
6 bers listed on the roll, the organic governing docu-  
7 ments shall be deemed to have been approved by the  
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—  
10 Within 45 days after the Secretary has approved the  
11 organic governing documents or the organic govern-  
12 ing documents are deemed approved, the Secretary  
13 shall assist the Native Hawaiian Interim Governing  
14 Council in holding an election by secret ballot for the  
15 purpose of determining the individuals who will serve  
16 as governing body officers as provided in the organic  
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of  
19 this initial election and notwithstanding any provi-  
20 sion in the organic governing documents to the con-  
21 trary, absentee balloting shall be permitted and all  
22 adult members of the Native Hawaiian governing  
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections  
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and  
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-  
4 MENTS.—When ratified by a majority vote of the  
5 adult members of those listed on the roll, the organic  
6 governing documents shall be revocable by an elec-  
7 tion open to the adult members of the Native Ha-  
8 waiian governing body, and amendments to the or-  
9 ganic governing documents may be ratified by the  
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-  
12 dition to all powers vested in the Native Hawaiian  
13 governing body by the duly ratified organic govern-  
14 ing documents, the organic governing documents  
15 shall also vest in the Native Hawaiian governing  
16 body the rights and powers to—

17 (A) exercise those governmental authorities  
18 that are recognized by the United States as the  
19 powers and authorities that are exercised by  
20 other governments representing the indigenous,  
21 native people of the United States;

22 (B) provide for the protection of the civil  
23 rights of the members of the Native Hawaiian  
24 governing body and all persons subject to the  
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian  
2 governing body exercises its authority consistent  
3 with the requirements of section 202 of the Act  
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or  
6 encumbrance of lands, interests in lands, or  
7 other assets of the Native Hawaiian governing  
8 body without the consent of the Native Hawai-  
9 ian governing body;

10 (D) determine the membership in the Na-  
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and  
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other  
16 provision of law, upon the approval by the Secretary  
17 of the organic governing documents of the Native  
18 Hawaiian governing body and the election of officers  
19 of the Native Hawaiian governing body, Federal rec-  
20 ognition is hereby extended to the Native Hawaiian  
21 governing body as the representative governing body  
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-  
24 LEGES.—Nothing contained in this Act shall dimin-  
25 ish, alter, or amend any existing rights or privileges

1       enjoyed by the Native Hawaiian people which are  
2       not inconsistent with the provisions of this Act.

3       (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-  
4       ERNING BODY.—

5           (1) CHARTER OF INCORPORATION.—Upon peti-  
6       tion of the Native Hawaiian governing body, the  
7       Secretary may issue a charter of incorporation to  
8       the Native Hawaiian governing body. Upon the  
9       issuance of such charter of incorporation, the Native  
10      Hawaiian governing body shall have the same status  
11      under Federal law when acting in its corporate ca-  
12      pacity as the status of Indian tribes that have been  
13      issued a charter of incorporation under the authority  
14      of section 17 of the Indian Reorganization Act (25  
15      U.S.C. 477).

16          (2) ENUMERATED POWERS.—Such charter may  
17      authorize the incorporated Native Hawaiian govern-  
18      ing body to exercise the power to purchase, take by  
19      gift, bequest, or otherwise, own, hold, manage, oper-  
20      ate, and dispose of property of every description,  
21      real and personal, including the power to purchase  
22      lands and to issue an exchange of interests in cor-  
23      porate property, and such further powers as may be  
24      incidental to the conduct of corporate business, and  
25      that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2       There is authorized to be appropriated such sums as  
3 may be necessary to carry out the activities authorized in  
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
6 **THORITY; NEGOTIATIONS.**

7       (a) REAFFIRMATION.—The delegation by the United  
8 States of authority to the State of Hawaii to address the  
9 conditions of Native Hawaiians contained in the Act enti-  
10 tled “An Act to provide for the admission of the State  
11 of Hawaii into the Union” approved March 18, 1959  
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13       (b) NEGOTIATIONS.—Upon the Federal recognition  
14 of the Native Hawaiian governing body pursuant to sec-  
15 tion 7(d) of this Act, the United States is authorized to  
16 negotiate and enter into an agreement with the State of  
17 Hawaii and the Native Hawaiian governing body regard-  
18 ing the transfer of lands, resources, and assets dedicated  
19 to Native Hawaiian use under existing law as in effect  
20 on the date of enactment of this Act to the Native Hawai-  
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23       Nothing in this Act is intended to serve as a settle-  
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2       The Secretary is authorized to make such rules and  
3 regulations and such delegations of authority as the Sec-  
4 retary deems necessary to carry out the provisions of this  
5 Act.

6 **SEC. 12. SEVERABILITY.**

7       In the event that any section or provision of this Act,  
8 or any amendment made by this Act is held invalid, it  
9 is the intent of Congress that the remaining sections or  
10 provisions of this Act, and the amendments made by this  
11 Act, shall continue in full force and effect.

○



Senator INOUE. We will now called upon the cochair of these proceedings, Congressman Neal Abercrombie.

Mr. ABERCROMBIE. Thank you very much, Senator, aloha.  
Senator INOUE. Aloha.

**STATEMENT OF HON. NEIL ABERCROMBIE, U.S.  
REPRESENTATIVE FROM HAWAII**

Mr. ABERCROMBIE. This bill was drafted in response to concerns raised by *Rice v. Cayetano*. It acknowledges a Federal trust responsibility for native Hawaiians, it recognizes Native Hawaiians' rights and self-governances in native people, and lays out a process for Native Hawaiians to establish a structure of self-governance.

The bill addresses two pressing needs. It will protect the native Hawaiian programs, including Hawaiian homes, from court challenges by those who would deny or ignore unique historical circumstances that make these programs legitimate and necessary.

It will provide a mechanism for native Hawaiians to organize and establish a legal entity for self-government. As the Senator has indicated, the legislative language in this bill is not carved in stone. It is a starting point for discussion, and a framework that will move us forward toward these goals.

As we already indicated, we are looking to the native Hawaiians for guidance in completing a final draft. That is why these hearings have been scheduled.

I hope that members of the audience will pay close attention to what we are saying here, as we begin. It does not enable us to move forward with this process, regardless of the outcome, if people want to testify on something that has nothing to do with the bill. It can cause division and confusion, but not advance the cause at all.

So I wish to reiterate that absent activity that will move this bill forward, we may easily find ourselves in circumstances in which Hawaiian programs, and even the establishment of Hawaiian homes, could find itself in jeopardy.

We must make certain the trust responsibility is made clear in constitutional terms, and that we will be able to survive across the broad spectrum of Hawaiian interests, any court challenges from those who are either ignorant of or dismissed of Hawaiian history.

Thank you.

Senator INOUE. Thank you very much.

May I now recognize my distinguished colleague, Senator Akaka.

**STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM  
HAWAII**

Senator AKAKA. Thank you very much, Mr. Chairman.

[Greeting in native tongue.]

I would like to begin by thanking all of you for coming to this hearing, and thank those who have come from the neighboring islands, traveling here to share their manao with us. I realize the change in the hearing schedule was sudden, and I thank you for understanding.

I would also like to express my thanks to the committee members for agreeing to continue with the hearings on S. 2899 and H.R. 4904.

While the news that I would not be able to travel to the neighboring islands was frustrating, I did not want it to affect this legislation. I thank the committee for not canceling the hearings, and for allowing the task force on native Hawaiian issues to continue moving forward to enact this significant measure.

In March 1999, Hawaii's congressional delegation formed the task force on native Hawaiian issues. I was given the honor of serving as the chairman of this important task force. We immediately made it our priority to clarify the political relationship between native Hawaiians and the United States. As chairman, I wanted to ensure that our process involved the community at the very beginning of the process.

For that reason, we created five working groups to assist us with this. The members of these working groups have provided valuable insight and valuable input. I express my deep, deep appreciation for their time and dedication to this important initiative. I am very pleased by the discussion this legislation has generated.

It is only through addressing these concerns that we began to resolve long-standing issues facing native Hawaiians. Resolving these issues will not be easy. It will not be quick and it will not be painless. Our emotions about these issues run deep and are influenced greatly by those who have gone before us, our parents and our grandparents.

The time has come, however, for us to address all these issues so that we can begin to provide a better future for the children of Hawaii.

This is an incremental process. This legislation is one more step in our journey towards the better future. This legislation should address the Federal relationship only. It did not affect claims. It does not affect alternatives sought at an international level. Certainly, it does not resolve the issue of sovereignty.

The legislation does, however, make it easier for the native Hawaiian community to deal with issues of sovereignty, self-determination, and self-governance. It makes it easier because it provides for the reorganization of a native Hawaiian governing body for a government-to-government relationship with United States.

It provides the process for native Hawaiians to come together and to begin to address and resolve long-standing issues so that we can move forward as a people.

Over a period of time, I have been asked, why we have a government-to-government relation. My simplest answer is that a government-to-government relationship provides native Hawaiians with a seat at the table to provide input, to be consulted, and participate in any Federal policies affecting native Hawaiians.

How is this relationship beneficial to native Hawaiians? A government-to-government relationship is beneficial because it provides native Hawaiians with increased control over local issues. Right now, native Hawaiians have very little control and hardly any opportunity for input in respect to Federal policies which impact them.

While native Hawaiians continue to have a unique and distinct community, with recognized culture and tradition, native Hawaiians lack a governing entity for which they can interact with the Federal Government.

This legislation provides a process for the reorganization of the governing entities. This legislation provides for the empowerment of native Hawaiians through a government-to-government relationship with the Federal Government.

This legislation clarifies the legal and political relationship, and forces the trust responsibility of the United States with native aboriginal indigenous people of Hawaii. It recognizes native Hawaiians' right to self-determination.

There are some who have told me that this legislation is flawed, because it does not reinstate the Kingdom of Hawaii; because it does not provide for total independence, or provide for reparations for native Hawaiians.

As I have previously stated, this legislation addresses the Federal relationship between native Hawaiians and the United States. This legislation seeks to empower native Hawaiians through Federal recognition for a government-to-government relationship.

The fact remains that Hawaii is a State. As such, the United States needs to fulfill its responsibility toward native Hawaiians, as the native aboriginal indigenous people of Hawaii.

Federal recognition does not impact alternatives sought at the international level. Those pursuing alternatives at the international level will be able to continue their efforts. There is no reason why native Hawaiians should not be able to pursue a better future within both the Federal and international context.

This legislation is also important to non-native Hawaiians. I have heard this legislation referred to as "race based and divisive." I strongly disagree. Failing to address these issues is divisive. Ignoring these issues does not make them go away. The history of Hawaii includes these issues. We must begin to resolve them if we are going to move forward as a State.

Native Hawaiians are the indigenous people of Hawaii and, as such, have a special political and legal relationship with the United States. This legislation clarifies that political relationship. This legislation provides the next step in a long process toward resolving these outstanding and long-standing issues.

This legislation brings all of us together, native Hawaiians, Kamaaina, and Malahini. It does not pull us apart. It must not and we must not be afraid to move forward together.

I have been asked, why do we need to rush to this legislation? I am very surprised by this question. The political relationship between native Hawaiians and United States has been a topic of this discussion for many, many, many years. This is not the first time that Federal legislation has been drafted to address this issue.

This is not a new issue. The political relationship between native Hawaiians and United States goes into the heart of many of the long-standing issues facing native Hawaiians including ceded lands and self-determination.

We set an ambitious timetable for this legislation. I am pleased that we are on track with that timetable. With the support of the executive branch, we have a real opportunity to enact long-awaited legislation, which will address long-standing issues, and serve to empower native Hawaiians.

I now turn to you, the people of Hawaii, to share your manao on how we can make this legislation better. I ask that in sharing your

manao, you show respect to everyone who is here. We are all striving for the same goal. We may disagree on the method of how to reach that goal, but that does not mean that we cannot have a meaningful discussion.

I was disappointed by the disruptions during yesterday's hearing. Throughout this process, we have worked to ensure that the community has an opportunity to be heard. We must listen to one another with respect. I look forward to your input as we continue to move forward as a people, and as a state, to provide a better future for the children of Hawaii.

Thank you very much, Mr. Chairman.

Senator INOUE. Thank you very much, Senator Akaka.

May I now called upon Representative Mink.

**STATEMENT OF HON. PATSY T. MINK, U.S. REPRESENTATIVE  
FROM HAWAII**

Mrs. MINK. Thank you, Senator Inouye, and my colleague, Representative Abercrombie.

I want to join the delegation in welcoming all of you who are present at this hearing, and to thank and acknowledge all those who have come to testify. We appreciate that very much.

I also want to thank those who have submitted testimony to these hearings. I want to assure you that all of us will read the testimony with a great diligence, and I want to express our appreciation for the effort that you have put forth in sending in these remarks to us. They are very, very important.

It is regrettable, and I join Senator Akaka in expressing regrets also, that the neighbor island hearings had to be canceled, and held only on Oahu.

But the opportunity to have your words heard and listened to and transcribed is being offered. All you need to do is make a phone call toll free, and your message will be received.

I hope that the people who intended to testify but could not, for various reasons, will take this opportunity which is being made available.

These hearings are very important. As I said yesterday, probably since Statehood, no more critical decision is about to be made with respect to the status of citizens within this state and within this nation. I take utmost seriousness in the deliberations that will have to be made with respect to this legislation.

I will, at this point, reserve my comments to the end of the hearing, after we have heard all of the testimony. Thank you, Mr. Chairman.

Senator INOUE. Thank you very much.

May I now call upon our Delegate from American Samoa, the Honorable Eni Faleomavaega.

**STATEMENT OF HON. ENI F.H. FALEOMAVAEGA, U.S.  
DELEGATE FROM AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Mr. Chairman, as a member of the House Resources Committee, I want to sincerely thank you, Mr. Chairman, and the members of the Hawaii delegation, for allowing members of the Congressional committees to come and participate in these very important hearings.

I want to express my sincere appreciation for the leadership and the services that the Hawaii delegation has provided for the people of Hawaii.

I also want to express my full support for the proposed bill. I sincerely look forward to hearing from witnesses this morning. Again, Mr. Chairman, thank you for allowing those of us who are not with the constituency with the State of Hawaii to come and participate.

Again, thank you, and I look forward to hearing from our witnesses this morning.

Senator INOUE. I thank you very much, Congressman Faleomavaega.

Now for our first panel, may I call upon Judy Naumu Stewart and Colette Puaoli. Ms. Stewart, welcome. May I first recognize Judy Stewart.

#### **STATEMENT OF JUDY NAUMU STEWART, KEKAHA, KAUAI**

Ms. STEWART. Aloha, my name is Judy Naumu Stewart. I come from the island of Kauai. I am a beneficiary of the Hawaiian Homelands Act of 1920. I live on Hawaiian Homelands in the Kekaha Subdivision II. I also have a ranch up in Poipu Kawaihae, Kauai. I am really hobby ranching beef cattle up there.

Anyway, I am here to represent the State Council of Hawaiian Homestead Association, because I am a beneficiary. To be a member of the State Council of Hawaiian Homestead Association, which has the acronym SCHHA, you have to be 18 years old; 50 percent plus Hawaiian, living on Hawaiian Homelands; or the lessee of the Hawaiian Homelands land.

Each association is formed in a different Ahupua'a, and the officers are elected by their people in their area. The officers of these different associations get together they and they elect an Ahupua'a leadership.

This Ahupua'a will have a chairman, and the chairman will speak for all of the island that they represent, such as Hawaii, Maui, Molokai, Oahu, and Kauai. The five Ahupua'a presidents are the executive board members.

At our convention in 1997 on the big island at Lani Loa, our delegates, who are the elected officers from the different associations, elected us as officers. Our chairman is Anthony Sang, our vice chairman is Tasha Comal, our CEO is Lawana Beck, and our Secretary is Donna Howard. I am the director of finance. We sort of coordinate the things that need to be done for the State Council.

At this time, I would like to say something as a thanks, and here I go again, getting emotional here, to Senator Inouye. What SCHHA is today, is what his love and compassion to us has helped us to succeed 14 years in protecting the Hawaiian Homelands Act.

We have come a long way. I think the biggest accomplishment that we did was to be able to have our tax exemption on homelands, because we do not own the land, and we were being taxed like everybody else, as though we owned it in fee.

So now all we do, we pay from \$25 to \$100, depending on what county you come from, 1 year, for real property tax, and the different counties called it administrative cost.

We have extended the Homeland year from 99 to 100 years, because the people in Kamala Ula were the first people to be home-

steaded, and the third generation needing money to rebuild their homes, because they were old. They come to us at Moloka'i, at our meeting, and we supported them on that. We got the extra 99 years that they could qualify for their loans to rebuild.

So I belong to an elite group called the SCHAA, and I am very proud to be a member of that group, because we all have the same purpose in life. But the man who really helped us in Senator Inouye. I just wanted to thank you, Senator, very much for that.

On August 20, 2000, the State Council of Hawaiian Association had our annual convention at the Plaza Hotel. We passed a resolution in support of this bill. I think you have a copy of it.

I know time is of essence. I will not read it. But the State Council of Hawaiian Homestead Association supports this bill 100 percent. On this resolution, five of us Ahupua'a presidents signed it, because our people passed this part.

Thank you very much for the opportunity, Senator Inouye, of letting me share my manao. I hope that this bill will be the last bill that we have to testify for, for the rights of the Hawaiian people.

I think we have been to too many hearings, and really nothing has been done. We keep coming to meetings and coming to meetings. There is always something else.

Just in December, we had a reconciliation meeting, and now we have this thing, again. Let us hope this will be the answer to our Hawaiian people's concern.

Like the SCHAA, we only had 14 of us who organized. We did not have consensus of all the associations of the state, but we went forward. Today, we have 23. On my island alone, on Kauai, two more associations want to come in to join the SCHAA.

So I think if we can support your bill here, Senator Akaka, and go forward and do the best we can, that the Hawaiians will not lose any of their entitlements, as far as our living is concerned.

Thank you very much.

[Applause.]

Senator INOUE. I thank you very much, Ms. Stewart. I am certain that I speak for the committee when I say that we share your dreams and your hopes. Thank you.

Now may I call upon our next witness, Collette Puaoi.

#### STATEMENT OF COLLETTE PUAOI, MOLOKAI

Ms. PUAOI. Aloha, my name is Collette Puaoi. I come from the island of Molokai. I am a homesteader of Molokai. I come today to take advantage of this opportunity to speak before you, and say what I have to say.

I come today in support of this bill, S. 2899, with my support, along with others who I represent, to give you the support to support us as native Hawaiian people. With this, we hope that you could protect us from all that is against us, to make us strong.

I come from the Ahupua'a of Molokai, Oli Loa. We raise cattle and pigs. I would want that for my children in the future. It is solid. It is being native. It is good. That is what I want to keep for my future children, my children I have today, and my grandchildren.

Thank you.

[Prepared statement of Ms. Puaoi appears in appendix.]

Senator INOUE. We thank you very much, Ms. Puaoi.

[Applause.]

Senator INOUE. Now it is my pleasure to call upon two friends, who have traveled long distances to be with us this morning; they are from Alaska, the president of the Alaska Federation of Natives of Anchorage, AK, the Honorable Julie Kitka; and the president of the Tlingit Haida Central Council of Alaska, the Honorable Edward Thomas.

Mr. ABERCROMBIE. Mr. Chairman?

Senator INOUE. Yes.

Mr. ABERCROMBIE. Before our friends from Alaska begin their testimony, I hope that I can have leave to express my gratitude also for them being here. I hope that you will take my greetings back to my good chairman, Don Young, who authorized the Resources Committee to have an official hearing, and allowed me to cochair with Senator Inouye.

We know that Representative Young is a good friend to Hawaii. Of course, we want to work very closely with you on behalf of all Alaskan interests. I can assure you that our good chairman has that first and foremost in mind, when he is in Washington.

Thank you again, very, very, much. Please convey my greetings and aloha to him. Thank you.

Senator INOUE. Now may I call on President Kitka.

#### **STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES, ANCHORAGE, AK**

Ms. KITKA. Thank you, Mr. Chairman.

I very much appreciate the opportunity to testify today. My name is Julie Kitka. I am the president of the Alaska Federation of Natives, and have been president for a little over 10 years.

First of all, I want to say how thankful we are to be able to participate. I want to tell the committee, as well as the Hawaiian people a little bit about who we are, before I start our testimony, so people can understand a little bit more why it was important for us to come down here and participate in this hearing.

There are more than 110,000 native people living in Alaska; 53 percent being Eskimos, 34 percent being Indians, and 13 Aleut. We are a very heterogeneous collection of aboriginal American citizens.

The words "Alaska Native" encompasses the oldest Eskimo great-grandmother in the village of Tintatooliac, whose lower lip and chin show the blue green tatoos of her adolescent rights of passage, and who has never set foot outside her home region.

It also describes the 35 year Tlingit attorney with a degree from Yale Law School and a successful career in governmental services in the private sector. It includes every native person in Alaska, between these two cultural markers.

A majority of our people continue to live in the 230 traditional villages of rural Alaska, while others have migrated to Alaska's cities and outlying regional centers, in search of education, careers, and services.

Despite all these differences among Alaska Natives, we share one common goal, the need to hold together as indigenous cultures, while carefully integrating a part of ourselves in the mainstream economy and culture of modern America.

This ambiguity, the desire to be true to the traditions of our ancestors, while changing enough to ensure future opportunities for our grandchildren, is very hard to resolve. It offers no exclusive choice between old and new ways; rather, it is an ongoing process of balancing and combining values and behaviors that often conflict with one another.

My perspective which I am going to share today is only one perspective. I hesitate to speak on the accomplishments and struggles of the Hawaiian people, but do so because I believe we have more in common than you may know.

Again, who are we? We have many common values. As an example, our Inuit people, the Eskimo people which, as I mentioned, represent about 53 percent of our native population, an example of our common values is this. Every Inupiat is responsible to all other Inupiat for the survival of our cultural spirit and values and traditions, through which it survives. It is through our extended families that we retain, teach, and live our Inupiat way.

We teach our children Inupiat values such as knowledge of language, sharing, respect for others, cooperation, respect for elders, love for children, hard work, knowledge of our family ancestry, avoidance of conflict, respect for nature, spirituality, humor, family roles, hunters' success, domestic skills, humility, and responsibility to tribe.

Our understanding of our universe and our place in it is a belief in God and a respect for all his creations. I believe that many of these cultural values are values that the Hawaiian people also treasure.

When I say that we have more in common than you may know, I do believe we are brothers and sisters, and we share many common values. Each of us have followed different paths toward the achievement of our values in living our lives. All of us surely will continue to use different means in expressing our inherent rights in our march toward self-determination.

Different economic and political realities dwell on our homelands. As such, different approaches have been used, and different approaches will continue to be necessary; but first, more of our similarities.

The essential focus of our efforts is the same. The reasons why we all strive for self-governance are identical, and many of the mechanisms are identical.

This legislation before us today, Federal recognition, is a legal tool which, in my view, can help you on your path to self-determination. There is a fundamental right to self-governance that indigenous people intrinsically feel.

It is this fundamental right that links us all. We learn through each other and we give support to each other. We share your values and we share many of your sufferings.

Many of you may not know that Alaska Natives have one of the highest infant mortalities in Fetal Alcohol Syndrome rates; nearly twice the national average. Almost 10 percent of the native children in my State receive child protective services, and in 1992, nearly one out of eight native males between the ages of 14 and 17 have spent time in juvenile detention.



In some of our rural school districts of Alaska, 30 percent of our native elementary students and 40 percent of our native secondary students were performing below grade level.

In 1993, natives constitute 16 percent of the total population, and 13.5 percent of those age-eligible for prison, and fully 32 percent of the state inmate population; mostly alcohol-related offenses; as well as there is a high incidence of domestic violence that damage many of our families.

From 1964 to 1989, native suicide rates have increased by 500 percent; 86 percent by native males, and one-half by males, ages 15 to 24 years of age.

The most revealing fact about what has happened to Alaska Natives in the recent decades is that in 1990, suicide rates of native males in the ages of 20 to 24 years of age was 30 times the national average for all groups.

So when I say we share many common values, I know we share many common sufferings. I know the statistics of the native people, and many of them are very similar. So we are struggling, trying to accomplish things better for our people, but we are the same brothers and sisters.

None of the actions that we have been facing in recent times has been more dangerous than the current 11 year attack on our legal protections of our subsistence hunting and fishing in our villages. If successful, it will destroy the food base by which native communities feed themselves. Without subsistence, as well as economic development and jobs, most of our villages will have no future.

All of our people may not know that subsistence and our own choice of governance are basic, fundamental human rights, but they know in their hearts and souls that these are God-given rights and are as essential to life as air and water. Our people will not willingly allow these rights to disappear.

Our Federal recognition, as indigenous people as Alaska Natives, is a legal tool that we use to protect our people's way of life. Without Federal recognition, there would be no legal basis in the United States Congress to either appropriate funds for our people for basic health care, for education programs, and other important services.

Without the Federal recognition, we would not be able to protect our people's hunting and fishing rights. In fact, the Federal recognition is the legal ground on which this rests.

I would like to cite one specific concrete example of how important this Federal recognition is to our people, so that the Hawaiian people might understand how important it is to us and why we came here.

As I mentioned, our hunting and fishing rights have been under assault for about the last 30 years, but very intensely in the last 30 years. We have a Federal law, the Alaska National Interest Conservation Act, ANICA, which was passed in 1980.

I want to read one paragraph of the findings on that, which this Federal law is the only legal threshold that we have to protect our hunting and fishing. Our whole State legal system and legal framework is all in disarray because of court decisions and challenges in State laws. But this Federal law is in place, and it is again based on the Federal recognition of our people. I would like to cite the finding.

In order to fulfill the policies and purposes of the Alaska National Claims Settlement Act in a matter of equity, it is necessary for the Congress to invoke its Constitutional authority over native affairs, and its Constitutional authority under the Property Clause and the Commerce Clause to protect and provide the opportunity for continued subsistence uses on the public lands by natives and non-native rural residents.

It is this reference to Constitutional authority which says you must do everything you can to protect for your people. I believe this bill before you is a step in that direction.

As I mentioned, this Federal law is the only protection that we currently have for our subsistence hunting and fishing, and the Federal law and the recognition is a tool that we use to protect our people's way of life.

I did want to just briefly mention, and I will be brief because I know I am taking up a lot of time, I heard concerns about limitations of people in participating in other forums. Our people, even though we are recognized by the Federal Government, participate actively in the international arena in a number of important areas.

One example is the Alaska Eskimo Whaling Commission, which is active in the international negotiations. As many of you know, our people on the Arctic Slope and the coastal areas depend upon whaling as an important cultural tradition, as well as to feed their family. In order to be able to harvest those whales, they do have to participate in the international arena.

Federal recognition of Alaska Natives does not preclude us from activities on the international level. It does give us a place at the table.

I recently was participating in hearings in New York before the United Nations, in the Office of the High Commissioner of Human Rights who, this month, is appointing a special repertoire on access to food. Our subsistence hunting and fishing falls within this area of human rights.

We have recently met with representatives of the State Department, requesting a letter of non-objection to a visit to the U.S. and Alaska by this special repertoire. So our Federal recognition does not preclude our participation in the international arena.

The United Nations has announced it is creating a permanent forum for indigenous people, the first of its kind, to enable over 300 million indigenous people, living in more than 70 countries around the world, to convey their different opinions and views.

Our Federal recognition as Alaska Native people will not preclude our participation in these types of international forums.

Last, I wanted to add two suggestions to the legislation, which I would urge you to consider or reject. It is your choice, but it is based on our experience in implementing our land claims settlement, and our experience working with our people.

When our land claim settlement was passed, immediately after that, we were busy for many years implementing it. One lesson that we have learned is, it would have been a lot more helpful to our people if, after that legislation would have passed, we would have had a chance to slow down the implementation and educate our people.

I am not saying slow down the legislation. Get the legal protections that you need, but take time after you get the law to spend some time educating your people, and build this into your plans.

The second one is, as was indicated, I am the president of the Alaska Federation of Natives, which is a statewide organization. We have annual conventions every October at which we convene and get our people together.

I strongly urge the Hawaiian people to convene a statewide gathering, and give the people most affected an opportunity to get together and build unity and build strength.

I truly believe that our conventions and our statewide gatherings are very important tools that our people use, not only to share values, share common aspirations, but it also gives us strength as we deal with people that oppose us and try to tear down things that are important to our people.

Last, I wanted to mention that even though Federal recognition is a tool which we hold very precious, it is still up to us to shape our own future. It is our own responsibility to work to help our own people. If we do not have the bill to survive, no one can do it for us.

We have many opportunities and many threats. We must re-dedicate ourselves to seeing sharper, hearing more clearly, and working even smarter in order to accomplish our people's hopes, dreams, and aspirations. This will not be easy.

Thank you, Mr. Chairman, for allowing me the opportunity to participate.

[Applause.]

Senator INOUE. Now may I recognize President Thomas.

**STATEMENT OF EDWARD THOMAS, PRESIDENT, TLINGIT  
HAIDA CENTRAL COUNCIL, AK**

Mr. THOMAS. Thank you, Mr. Chairman and distinguished members of the Congress, honored Hawaiian elders, the honorable native Hawaiian leaders, ladies and gentlemen.

[Greeting in native tongue.]

Mr. THOMAS. I know that does not sound like Aloha, but it means the same thing.

[Remarks giving in native tongue.]

My Tlingit name is Zahoo. I have a Haida name of Skillqudance. I am a Dog Salmon of the Raven Moyetee. I was born and raised in Craig, Alaska. My father's people are of the Wolf Clan.

My English name is Ed Thomas. I am the president of the Central Council of the Tlingit Haida Indian Tribes of Alaska. It is the largest federally-recognized tribe in the State of Alaska, with 23,000 members.

I have been involved in Indian issues for over 25 years. I started when I was 3. I am also a member of the Board for the Office of the Special Trustee for Indian Affairs for the Department of the Interior.

Mr. Chairman, I am honored to be here today to speak in favor of and in strong support of this very important legislation. I provided you a copy of my written testimony for the record, and I will not be reading those comments to you. I will be giving some other points that I think are important.

Although I am a strong supporter of the Federal Acknowledgment Process known as FAP, I think it is necessary, from time to time, for Congress to mitigate the shortcomings of this process.

In 1993, my tribe was very nearly terminated, as a result of BIA administrative blunders. We had to turn to Congress for protection of our recognition. I want to thank you, Senator Inouye, for your help as we went through those very trying times.

Let me make it ultimately clear that Federal recognition is not a granting of sovereignty. Aboriginal people possess inherent sovereignty. It cannot be legislated or taken away from the people.

[Applause.]

Mr. THOMAS. The Tlingit and the Haida people have lived as distinct people since time immemorial, with or without Federal recognition. Federal recognition has not changed the traditional ways we interact with one another. It has not changed our culture. It has not changed our language; our relationship to the Earth and to the sea; or our spiritual practices.

What it has done, it has provided us with the structure and legal definition that helps us perpetuate our governance into the future. I believe that a strong legal framework is vital for aboriginal people of the world to maintain their identity in this rapid changing society. I encourage my Hawaiian brothers and sisters to join hands in support of this legislation.

Just look at it as an opportunity. Do not feel that you have to compromise your unique culture, your traditions, language, and identity in order to take advantage of the opportunities presented in this bill.

Ladies and gentlemen, I am here today in the true spirit of Aloha. I wish my Hawaiian brothers and sisters well, as you debate this very important legislation. I pray that you will conduct all your debates in a very respectful manner.

It is very important for our people, the indigenous people of this world, to be united, to stand the aggressions of the dominant society.

In my State of Alaska, the dominant society in the form of the State legislature spends hundreds of thousands of dollars per year to strip Alaska Natives of our inherent rights and our dignity. I am pleased to see that your State legislation, the Hawaiian legislature, has supported this legislation.

In closing, Mr. Chairman, I thank you for this opportunity to come to the land of enchantment to hear my testimony, manao, on this very important legislation.

[Remarks in native tongue.]

[Applause.]

Senator INOUE. Thank you very much, President Thomas.

Congressman Abercrombie, do you have any questions?

Mr. ABERCROMBIE. No; other than to express my thanks, particularly for the opportunity that I have had to visit Alaska.

I know, and perhaps just parenthetically for those attending, Alaska, just by its very size and because of the geography, has native interests which are not necessarily always the same.

Those who live on the coast and make not only their cultural context within which they live, but actually their economic circumstances in the ocean, may be quite different and require different necessities than those who live in the central part of Alaska, who are land based more exclusively.

So when Mr. Thomas expresses the idea of the requirement that there be a coming together and a recognition of the differences and difficulties that have to be respected, you are speaking not academically, I know, but from long and hard experience.

I would hope that we could benefit from the circumstances and the experiences that you have had in that regard. I can assure you that as a member of the Resources Committee, we want to anything and everything we can to aid and assist you in that endeavor.

Mr. THOMAS. Thank you, Congressman. Let me make one statement on that. In my tribe, when we decided to sue the Federal Government back in 1929, the motion to enter into a lawsuit won only by one vote, and we entered into a lawsuit with the Government that led to our recognition.

Now that we are recognized, our people are so strongly in favor of recognition, we will defend it to our last breath, because we believe very strongly that we must have a government-to-government relationship with the Federal Government for us to perpetuate ourselves as a society and for the future.

Mr. ABERCROMBIE. Thank you.

Senator INOUE. Senator Akaka.

Senator AKAKA. I want to thank Julie Kitka and Mr. Thomas for coming and participating here. We, of course, look to you as people who have gone through a process already. This helps us not to begin from zero, but to take advantage of what you have already experienced, and then to move on.

For this reason, I want to say, mahalo. Thank you so much for coming and sharing with us. Pass our best regards to our good friend, Congressman Young, from Alaska. We know that he and his family of Alaskans have been an integral part of trying to move the people of Alaska ahead.

I thank you, again, for your help.

Mr. THOMAS. Thank you.

[Audience interruption, portions in native tongue.]

AUDIENCE MEMBER. To the chair, I stand for recognition by you. There are two things. These two come to represent their country and their nation [remainder off-microphone].

[Applause.]

Senator INOUE. I thank you very much.

[Audience interruption.]

AUDIENCE MEMBER. We do not appreciate as Hawaiians, when we come here to get an agenda and see a list of people that are going to testify, that we pick up the last piece of paper that they put out.

How rude; how dare you treat our people like this, as a second-rate citizen? We refuse to be treated like that again. Your staff should provide enough lists of people who will testify and any other information so we have access to it. We have had too many gatekeepers in our nation for too long. This is the end of it.

[Applause; chanting in native tongue.]

Mr. THOMAS. Mr. Chairman, this is Ed Thomas over here. I want to make it clear that from the Tlingit and Haida's point of view, we are not here to tell anybody how to do anything. We are simply here in support, as people to people. We respect entirely the leadership of the Hawaiian people to do what they must do.

We want to share with you a little bit of our experiences to provide the framework in which things can get done. But let me apologize if my comments have ever led to the connotation that I might be suggesting what to do.

Thank you.

Senator INOUE. Congressman Faleomavaega?

Mr. FALEOMAVAEGA. Mr. Chairman, I just want to assure the gentleman from Alaska, Mr. Thomas, you do not need to apologize. We thank you for being here in goodwill and sharing with us your knowledge and understanding of the process.

I thank you, Mr. Chairman.

[Applause.]

Senator INOUE. Once again, on behalf of the Hawaiian delegation, we thank President Kitka and President Thomas.

Now may I call upon Iwalani Arakaki of Molokai and Donna Howard of Molokai.

#### STATEMENT OF IWALANI ARAKAKI, MOLOKAI

Mrs. ARAKAKI. Aloha.

Senator INOUE. Aloha.

Mrs. ARAKAKI. My name is Iwalani Arakaki of Kalamaula, Molokai, Lot 13A. I am concerned of the following issues.

No. 1, is the update on Hawaiian Homelands Trust individual claims.

No. 2, is the Claimants/Plaintiff are properly before court and have a right to sue the State.

No. 3, I am one of the persons who is in the class action lawsuit.

No. 4, on June 9, 2000, Judge Marks granted class certification to claimants [letter attached]. We are on our way to a long process. This is only the first part of the case.

I would like to continue; mahalo. The State of Hawaii and its Governor Cayetano have taken away our civil rights from my ancestors, my children, my grandchildren, my unborn generations, and myself.

As a lineal descendant of the indigenous native people who are the original inhabitants in the Hawaiian Archipelago, also known as the State of Hawaii, it is my duty to reserve our inherent right to my ancestors and my unborn generation.

Even before the illegal overthrow of January 1, 1893, my ancestors occupied and exercised sovereignty in the Hawaiian Archipelago, including the area that now constitutes the State of Hawaii, as evidenced by, but not limited to, genealogical records.

I come of the Pihenui, Unea, Nauhiwa, Wawiki, Kaumakua lineage through my mom. Through my father, I come of the Ma'a, Kawenaole, Kaluahine, Kamakama'noa'noa' Manoano, Kauwe-o-mahi, Kauaua-a-mahi.

My exhibits will include certifications of verified facts: Affidavits, church baptisms, birth records, death records, censuses, court records, and kumu ohana sheets with Hawaiian Homelands. It also includes documents of different genealogical books of genealogies.

In summary, I absolutely object to S. 2899; respectfully submitted, Iwalani Arakaki. Mahalo.

[Prepared statement of Mrs. Arakaki appears in appendix.]

Senator INOUE. I thank you very much, Mrs. Arakaki.

[Applause.]

Senator INOUE. Now may I call upon Mrs. Howard.

#### STATEMENT OF DONNA HOWARD, MOLOKAI

Ms. HOWARD. Good morning, Mr. Chairman and committee members. My name is Donna Howard. I address you this morning as a servant of Hawaiian Homesteaders under a couple of hats.

My first hat is president of the Ahupua'a O Moloka'i. My second hat is secretary of the executive council of the State Council of Hawaiian Homestead Associations. My third hat is, I myself have a homestead lot in Kalamaula Mauka in Molokai.

You have my written testimony in front of you. Now I would like to share just a little bit from my own manao, please.

I would like to first start and thank Senator Inouye and Senator Akaka for all the work you have done and continue to do in our U.S. Government to protect Hawaiian issues and concerns.

This bill is a big step forward for the native Hawaiians. Although no bill comes written perfectly, that is why these people are out looking and wanting our manao. There will always be individuals and groups with many, many pros and cons, but now is the time to unite together as one and support the intent of this bill.

This will give native Hawaiians a tool to protect what we have to begin to build on the future that all native Hawaiians are looking forward to, and that is our self-governance.

It is obvious what the *Rice v. Cayetano* issue is doing to us right now. If we do not get something in place soon, our Hawaiian programs are going to keep falling with a domino effect.

It is really too bad that we cannot bring back the past, but that is inevitable. It cannot be done. We need to stop and go forward and get on with protecting what we have now, and where we want to progress in the future.

Now is the time to put this bill in motion so that policies will begin for the United States relationship with native Hawaiians, for the purposes that will clarify the special trust relationship between the Federal Government and native Hawaiians to establish a clear Federal policy to recognize the political status of native Hawaiians, and grant the right to self-determination.

In closing, I would like to go on record, as well as with my entities that I serve, as being in support of the intent of bill S. 2899; aloha.

[Prepared statement of Ms. Howard appears in appendix.]

Senator INOUE. I thank you very much, Mrs. Arakaki and Ms. Howard.

[Applause.]

Senator INOUE. Now may I call upon William Amona Amona and Dr. Daviana McGregor. I am pleased to recognize William Amona.

#### STATEMENT OF WILLIAM AMONA

Mr. AMONA. Senator Inouye, Senator Akaka, and members at the table, I am truly grateful for the opportunity of speaking, because I did not understand that we needed to call by August 21. I did not call, although I submitted a letter about this bill to Patsy; hello, Patsy.

I would like an opportunity to read what I wrote, believing that I have 5 minutes to cover it. I may go over 5 minutes, but I also wanted to make a few extemporaneous comments about the bill. With your permission, I would like to comment beyond the scope and minutes of my letter; but I will read my letter.

The letter is to the U.S. Senate committee hearing on past forms and S. 2899. My name is William Koamelani Amona, a kopona konacamali, residing at 2309 Mohoni Place, Ronticki Roundtop Drive, Oahu, HI.

I have read the 35 page bill above, and find the proposed bill exceedingly long, and probably made with the intention of discouraging Hawaiians from really understanding what the whole bill is about.

After reading the words in the bill and looking for the real meaning and purposes of the bill, I have decided to spend no more time in thinking about what it means to me and how it will affect the lives of our children and grandchildren, once I finish with this letter.

As a kopona of my ohana, with my wife Lydia, from the island of Kauai of nearly 59 years of marriage, with our 6 children, 10 grandchildren, 1 great-granddaughter, and the spouses, as a member of lahooi-ponum, a Christian fellowship of 12 Hawaiians, and as knuckamauni subject of the Hawaiian nation and a temporary government, we reject Mr. Akaka's and Mr. Inouye's proposal in S. 2899. We reject it with no uncertainty, with no bitterness, and with aloha.

Our rejection is based upon many reasons, and because we have been told that we have 5 minutes to share our manao with you, we will make it brief to fit your guidelines, or should we say your agenda.

We reject the proposed bill above because of the following reasons and for a thousand more, which must remain unexpressed except with our Heavenly Father, the creator of all things, including our Creator.

One, the overall bill of 35 pages, like we said above, is too long. We believe that it was intended to discourage Hawaiians from really knowing what it means. However, because we know who we are, because we know who you are, the Federal Government, we do not trust you to behave and to act with the spirit of aloha.

[Applause.]

[Remarks given in native tongue.]

It is important for those of you listening to me to understand who we are. We never lived when our queen was overthrown.

My sincerest apology, Mr. Chairman, and I will proceed. I also learned that I really do not know whether you are from the United States of America, or whether you represented the United States as a sovereign entity, or whether you represent the United States as a Federal corporation under the laws and constitution. I really do not know who I am addressing, but I will proceed.

It is an irrefutable fact that you have love for Hawaiians, because you occupy, bomb, and desecrate our land. You steal the use of our resources, and you have no shame to call your behavior over the past 108 years as having a "special trust relationship" with us,



whose homeland you have occupied without any legal authority except your own laws.

You thought about having a fiduciary or trust relationship with us, and you cite as proof that 200,000 acres of scrub land, which you stole from our kingdom. You talk about a trust relationship, and then you go ahead and lease all of Makooa for 65 years from the State for a total of \$1; not \$1 per year, but just \$1.

The Federal Government is a perfect example of an unindicted felon to us. You say we have the right of self-determination, provided you dictate the terms and conditions under Federal law. You can say the language, occupy and control, ceded land; knowing full well that it is stolen land.

We know that you know that the real reason for this complex and convoluted bill is to create a Federal Office of Hawaiian Affairs, where you appoint the trustee to work with the Hawaiian government agencies.

In reading this bill, I became truly afraid of what this bill says. To the best of my recollection, this bill literally tells my people that once you appoint a trustee, he can publish a notice and control and own our natural resources and our land.

We know that you know that the real reason for this complex and convoluted bill is to do what the overthrow of our queen was unable to do; and what was that? So that you can convince those Hawaiians with the koko, the aboriginal Hawaiians, the Hawaiians who were just fortunate enough, by the grace of God, to have had ancestors who became a part of the Inate.

Hawaiians love their land. The concept of owning land has never been part of our culture. Why is that? It is because Hawaiians came from the land, and our mission is to be the caretakers of the land.

The ownership of land is a strange and, in fact, a very objectionable term. How can we own the Earth which was created by our Heavenly Father? The Earth is not for sale. It is not to be sold, because the Bible says that. The Bible tells us, the land was never created to be sold.

The Hawaiian people were put here by Keocooa, to take care of it on the promise that if you take care of the land, the land will take very good care of you.

[Applause.]

Mr. AMONA. We have been bombarded by resolutions, giant resolutions of Congress. In one resolution, I always thought that you annexed Hawaii. The reality is, we had a treaty, which was completely ignored.

I thought, in learning about the Constitution, that when you deal with foreign countries and nations, you deal with them by way of treaties, not by joint resolutions.

When you pass a bill such as a joint resolution, it is only to be of benefit and service to your nation within the continental United States. The Joint Resolution of Annexation was not part of it.

I did not learn about that until maybe about 10 or 12 years ago, when I finished law school at the University of Michigan. They never told us, and I did not know that the United States overthrew my Queen. I did not know that.

To that extent, I concur, we Konocomali not only reject your attempt to circumvent the interregnum, which was immediately effectuated on the illegal takeover by your Government and the American European businessmen and descendants of the missionaries.

But we resent with every fiber in our bodies the lie in your bill that we are, and I quote, "the native people of the State of Hawaii" and that we are indigenous native people of the United States. You created the State government to be what it is, a corporation in the form of a government, controlled and dominated by you.

We Hawaiians of the koko resent both of your claims, because it is not true; you know it and we know it. There is no good reason for Hawaiians, who are Konocomali; or Hawaiians who were born in Hawaii, without a koko; or Hawaiians born elsewhere, and who choose to become denizens or part of the Hawaiian Kingdom.

The word "Hawaiian" was not indigenous to our culture. The word "Hawaiian" was labeled upon us by the foreigners and the missionaries.

Last, furthermore, we have a hunch. What is a hunch? It is a feeling from the gut that S. 2899 is an attempt to bypass the Apology Law of September 23, 1993. That is because it is a clear-cut confession of guilt of crimes committed, and it is a voluntary admission of civil liability, at the domestic level, and at the international level.

I close by saying this, I thank you for an opportunity to allow the people of whom I have the good fortune of being a member of, Hawaiian. I am also Chinese.

I ask only that the aloha spirit take control of this process that you have started. I thank you for the process. What is that? It is because we know who we are; who are ancestors are.

[Testimony in native tongue.]

Mr. AMONA. Stop coveting the vineyard of neighbors. For we are the caretakers of the vineyard, which you have occupied without aloha and without right. Let there be peace, and let the word prevail forever. Amen.

[Applause.]

Senator AKAKA. Mr. Chairman, let me say mahalo a nui loa to my brother, William Amona.

I cherish what you said. You oppose my bill. That is what we are here for. We want to hear what you have to say. If you support it fine; but in your case, you are opposing it. You have many good reasons for what you are doing.

I look upon you as a learned man. You went to Kamehameha. You were my upperclassman. You went to the University of Michigan to law school. You are a learned man, so I cherish what you said. I know it is coming from your heart and from your family. This is what we want to hear. I want to thank you for your solemn and thoughtful prayer, as we opened here.

We are here to listen to everybody. This is what I am hoping, that as we continue today, that those who have signs to show, that you can show it around the room, but please do not disrupt the proceedings.

The proceedings are to give people like you a chance to voice your opinion and get it into the records. The more disruptions we

have, we are not going to get there. I am hoping that we will continue to show the respect for the committee, for the people of Hawaii.

As you know, we have very many different views. Some people come and tell me, you know, we need this because times have changed in the world. We cannot apply what happened in 1778 to what happens today or tomorrow.

The thing is, for me, as a Hawaiian, I am not doing this for me. I want you to know that I am a very religious person, and I pray. I pray to God to help me. I feel that what I am doing is, I am being led, and I hope I am right. But I am looking for the future for Hawaii and the future for our children.

It is going to be different. It is not going to be like when we had a kingdom. It is going to be different. What are we going to do at that time? We have to prepare ourselves for that time. This is what I am concerned about, the future. It is going to be different.

The world is changing. I have got to tell you this. The Hawaiians have so much to add to the world. But we have to rise to the level of our kupunas.

[Audience interruption to proceeding.]

Senator AKAKA. We need to listen to the best of them to help our children in the future. That is my intent.

I hope those of you who come and you oppose it, fine; but I hope you have a plan.

[Audience interruption to proceeding.]

Senator AKAKA. Please do not blame me and the other Hawaiians. Pay respect to us and to what we are trying to do. It is not possible for all of you to say what you want to say. But as these disruptions occur, we will not be able to do that.

Let me come back to my brother, Bill Amona. Again, I cherish what you said, Bill. I know where your heart is. I know you are a God-fearing man. We are looking for the same thing, and that is what is best for our children. So, mahalo a nui loa to you.

Mr. AMONA. I wish to express my comments to the people who profess to be Hawaiians. I truly believe they did not understand. They do not understand who we are. I ask, Mr. Chairman and Patsy and Dan, that you can have in your heart some relevant basis for the voices which they express. They, unlike myself, do not know who they are.

Mr. Chairman, the reason I say that is, if they knew who they were, then they would have no reason to have fear that everything is in the hands of the Lord; mahalo.

[Applause.]

Senator INOUE. Now may I recognize Dr. McGregor.

#### **STATEMENT OF DAVIANA MCGREGOR, HONOLULU, HI**

Ms. MCGREGOR. Senator Inouye, Senator Akaka, Congressman Mink, Congressman Faleomavaega, aloha and mahalo for this opportunity to get my manao on this bill.

I am Dr. Daviana McGregor. I am testifying in support of the bill introduced by Senator Daniel Akaka, to afford Federal recognition of native Hawaiians.

I am an historian of Hawaii and the Pacific, and I teach as an Associate Professor of Ethnic Studies at the University of Hawaii

at Manoa; but to introduce myself as a Hawaiian [testimony in native tongue.]

I believe my ancestors come with me and join in this mana'o which I bring. I have three major points to contribute, as you consider this bill. If I have time, I would like to address also some concerns on the proceedings, as are expressed by our participants.

First, there are two sections of the bill, as drafted, which I believe need to be amended: Section 7(a)(2)(A), relating to the establishment of a nine member commission to certify that the adult members of the native Hawaiian community on the roll meet the definition of native Hawaiian should provide for the establishment of this commission, I would propose, by the President of the United States, from a list of nominees submitted by native Hawaiian organizations.

So I am adding to my written testimony that it be from a list of nominees submitted by native Hawaiian organizations.

Section 7(b)(1)(A), which provides for nominations of adult members to serve on the native Hawaiian Interim Governing Council at general meetings, should be amended to provide for a nomination process wherein candidates seeking election should gather signatures of nomination by 50 adult members on the roll and file to run by a specified deadline.

I feel that a general meeting with thousands of Hawaiians participating is very difficult to conduct proceedings within. The process of gathering signatures on a petition is something that has been well established since the first constitution of 1840, where our delegates to the House of Representatives, within the Hawaiian Kingdom House of Representatives that was first being established, just needed also to get signatures, I think, of 25 adult Hawaiians, actually not even to run, but to be a representative of their district at the 'aha that was being formed under the original 1840 Constitution.

So I believe a petition would be sufficient for nomination of members to participate in this governing council.

The second area of contribution is in support of the findings of this bill, those which refer to the continuity of a distinct native Hawaiian community and Hawaiian cultural, social, and political institutions. I am incorporating as part of my testimony attachment 1 and attachment 2.

Attachment 1 is the introductory chapter to "Native Hawaiian and Local Cultural Assessment Project: Phase 1 Problems/Assets Identification." It was done for the Department of Health.

The first chapter, which I authored, provides an overview assessment of the continuity of Hawaiian subsistence, cultural, and religious custom and practices of 'ohana networks, and of our ties to our ancestral and national lands.

Attachment 2 is an excerpt from the Governor's Moloka'i Subsistence Task Force Final Report of June 1994, and documents the continuity of Hawaiian subsistence, customs, beliefs, and practices on the island of Moloka'i.

Please note that the following technical reports also provide documentation of the continuity of Hawaiian subsistence, cultural, and religious belief, custom, and practice, and of 'ohana networks and

ties to ancestral and national lands. I have the listing in my written testimony.

The third part of my contribution is also in support of the findings of the bill which refer to the historical trust relationship of the U.S. Government to the native Hawaiian people.

I am incorporating as part of my testimony attachment 3. This attachment cites key public laws and Congressional committee reports, which document that a trust relationship between native Hawaiians and the U.S. Government, similar to that of Native Americans and the U.S. Government, has evolved as the operational or de facto policy of the U.S. Congress toward native Hawaiians.

What I am saying is, this trust relationship is not something that is going to be new, but it is something which does exist. This trust relationship, because it is not formalized, requires this legislation, as introduced by Senator Akaka, to officially recognize a government-to-government relationship between native Hawaiians and the U.S. Government.

Without this kind of formal recognition, we would lose the rights which our ancestors struggled to establish, when they established the Hawaiian Homes Commission Act, for example. That was really the first real time in law, through the work of the Pu'uhonua o Na Hawaii that Congress acknowledged this trust relationship. Without this legislation by Senator Akaka, that trust relationship can get lost to our future generations.

One important additional point to draw out, and this is more to address some of the concerns that have been raised by the participants, is that after annexation, we must realize there is a distinction in U.S. policy toward Hawaii and the multi-ethnic people of Hawaii, and the U.S. policy toward native Hawaiians.

The policy toward native Hawaiians is looking at a policy toward native Hawaiians as the indigenous people. The policy toward Hawaii and the multi-ethnic people of Hawaii is looking at a territory which had to be incorporated. Ultimately, that relationship evolved into statehood.

But the issue of the policy toward native Hawaiians, while it evolved into a trust relationship, has not reached the point of formalization.

This bill that is being heard today addresses U.S. policy toward native Hawaiians. It does not address U.S. policy toward Hawaii and its multi-ethnic citizens.

The United Nations is the appropriate arena to take up and resolve the status of the multi-ethnic nation of Hawaii. The U.S. Congress is the appropriate arena to resolve issues relating to the entitlements and claims of us, as native people of Hawaii.

As a native Hawaiian, I believe that we need to protect the entitlements which we have, as native Hawaiians, for our living Hawaiians and our descendants.

As a native Hawaiian scholar, it is my expert opinion that native Hawaiians have a unique and distinct claim to the Hawaiian National Lands, which were designated as government and crown lands of the Kingdom of Hawaii at the time of Ka Mahele, as well as lands which were later claimed by the Kingdom of Hawaii in the Northwest Islands, and became part of the government lands of the Kingdom of Hawaii.

These lands of the Government of the Kingdom of Hawaii were illegally seized by the provisional government, and turned over to the Republic of Hawaii, which ceded those lands to the U.S. Government.

Out of these Hawaiian National Lands which were ceded, the Federal Government established two land trusts for native Hawaiians of at least one-half Hawaiian ancestry: The Hawaiian Homelands and the ceded public lands trust.

I do not believe that non-Hawaiians have claims and entitlements which equal that of native Hawaiians to the cultural and natural resources of these Hawaiian National Lands.

I believe that the perpetuation of Hawaiian language, culture, and spiritual beliefs, the pursuit of subsistence fishing gathering and farming, access to health care and education are entitlements for native Hawaiians. These entitlements must be recognized by the U.S. Government, and acknowledged and respected by those who choose to make Hawaii their home.

By contrast, the effort to re-establish the independence of Hawaii is not a matter that can be uniquely and distinctly reserved for native Hawaiians to strive for and support.

The Kingdom of Hawaii was a kingdom of multi-ethnic citizens. All people who are born in Hawaii and for whom Hawaii is their only homeland have a right to participate in the process of self-determination of the multi-ethnic people of Hawaii.

Should the people of Hawaii, like most recently the people in East Timor, vote for independent status under the oversight of the United Nations, then the native Hawaiians will still be a minority group, with no automatic claim to our entitlements as the indigenous people of these islands.

Unless and until a process for Hawaiian recognition, as laid out in this bill, is set up under U.S. law, there will be no precedent for Hawaiian claims within an independent Hawaii government that is multi-ethnic.

The recognition of the sovereign status of native Hawaiians and the establishment of government-to-government relations between the U.S. Government and the sovereign native Hawaiian government can only strengthen the position of native Hawaiians, within a multi-ethnic Hawaii social system, whether it is incorporated in the United States, or whether it becomes independent of that federated government.

I wanted to share, because I was asked recently by students, what would the Queen have wanted to have done; how would the Queen have responded? The Queen, of course, in the period between the overthrow and the annexation, strived very hard for the restoration of the independence of Hawaiians before the U.S. Congress.

After annexation, she continued to pursue her claims to the Crown Lands, and the restitution of the rights to the native Hawaiian people.

But our history does not stop at annexation. Our history, as Hawaiians, does not stop with the overthrow and then annexation. Hawaiians continued to interact and participate in the government that was established in the Territory of Hawaii.

In 1900, there were elections for the first time in which Hawaiians could participate. Since the election of 1892, Hawaiians chose not to participate in the elections, because they were held by the Republic of Hawaii.

So in 1900, when Hawaii became a territory, it was the first time Hawaiians chose to actually participate in an election. They decided whether they should run as Republicans or whether they should run as Democrats. They chose to run as the Homerula ku'okoa, the Independent Homerule Party.

In the Congress, to establish the independent home rule party, let me read what Robert Wilcox said, who was arrested in 1985, trying to restore Queen Lili'uokalani to the throne.

"The question of the restoration of the monarchy is gone from us forever," said Wilcox. "We are now a people, however, who can vote."

You all know we have two thirds of the votes of this country. I say to you that the people who have been living on your rights and held the reins of Government are now without that power. If you want to rule, it is for you to decide. If you do not want to rule, you must so decide.

The monarchy is like a dear person that has died. Let it go; look to the future. We can send a delegate to Congress.

Then the convention went to Washington Place, where Queen Lili'uokalani received the delegates of the convention. She addressed the delegates of the Homerula ku'okoa as follows.

It is useless for us to abstain from taking our future stand. Our future prosperity depends upon it. As soon as the United States flag was hoisted over these islands, and our Hawaiian flag was lowered by the authority of the American Government, it meant that it had come to stay.

It is my wish for your future welfare to stand shoulder to shoulder and seek every means that will conduce the benefit of the whole nation. When the flag went down, it went down for good. We must now do our duty as Americans.

So as long as we are part of the United States, it is in our best interests, as native Hawaiians to support our delegation from Hawaii and the leadership that Senator Akaka has provided in introducing a bill which will provide us protection of all the rights which we have strived to hard to gain, and to the entitlements that we, as native Hawaiians, deserve and will pass on to future generations.

Mahalo to you all for your patience and your generosity in these sessions. Senator Akaka, I wish you good health as you heal, and health to all of you as you continue in this journey with us; mahalo.

[Applause.]

[Interruption to hearing from audience, in native tongue.]

Senator INOUE. And now may I call upon Michael Kahikina, Clara Kakalia, and Joseph Reyes.

#### **STATEMENT OF HON. MICHAEL KAHIKINA, HAWAII STATE REPRESENTATIVE**

Mr. KAHAKINA. [Greeting in native tongue.] In the spirit of aloha through our Savior Jesus Christ, I greet you, aloha.

Thank you to the most honorable Daniel Inouye, Daniel Akaka, our representative Patsy Mink, Neal Abercrombie, and our cousin from Samoa. Thank you for having me here this morning.

For our people of Hawaii, aloha. I hope you come with the spirit of aloha, because our kupuna's say [statement in native tongue] to

love one another is the golden rule. I come here with that aloha. May we agree to disagree and not be disagreeable? So I thank you.

I am State Representative Michael P. Kahikina testifying today in support of the intent of S. 2899 and H.R. 4909.

The purpose of this legislation is to clarify the political relationship between native Hawaiians and the United States. The legislation does not establish a new political relationship. The political relationship already exists through the Hawaiian Home Commission Act, as amended in 1921.

I stand here today testifying as a beneficiary of the Hawaiian Home Commission Act. I am a third generation native Hawaiian on the "Aina Ho'opulapula 'O Nanakuli; a keiki oka 'aina (children of this land)."

I am the only elected native Hawaiian serving in the State legislature, born, raised, and still living on Hawaiian Homestead land in Nanakuli. I moved back to Nanakuli after my mother passed away in 1990, with less than 40 years left on the lease.

In 1971, I applied for my own Hawaiian Homestead lease to find out years later that my application was not processed properly, and I was passed up many times from receiving an award.

In 1991, the State legislature enacted chapter 674, Hawaii revised statute, as part of an overall plan to address breach of trust claims against the State involving Hawaiian Homelands Trust.

The Hawaiian Homelands Trust Individual Claims Review Panel was established. Its purpose was to receive and review claims of individual native Hawaiian beneficiaries for actual damages resulting from an act or omission by an employee of the state in the management and disposition of Hawaiian Homelands trust resources for the period of August 21, 1959, which was statehood, to June 30, 1988.

In 1997, the panel submitted its first report to the legislature with recommended damage awards. The panel also sought an extension of the time period in which to review claims.

Act 382, passed by the 1997 legislature, extended the panel's time period to review claims by two years, mandating a final report to the 1999 legislature, prescribed a formula and criteria to qualify and resolve all claims and required the panel to apply the working group's recommended formula, once it was approved by the Governor.

The Governor approved the working group's recommended formula and criteria on December 30, 1997. The working group's recommendations eliminated almost 60 percent of the active claims in the claims process, and significantly changed the panel's formula for calculating actual damages.

Consequently, a group of claimants challenged the constitutionality of Act 382 in state circuit court. The panel believed that act 382 was seriously flawed and determined that it would not implement the working group's recommendation until a court reviewed the constitutionality of act 382.

In July 1998, a circuit court judge issued an order determining that certain provisions of act 382 were unconstitutional and deprived claimants of due process of the law. The court added that the composition of the working group undermined the appearance of a fair disposition of claimant's claims.



In an order issued December 30, 1998, the court further explained its earlier decision and ruled on all issues raised by the parties. The court reiterated its earlier determinations and also found, among other things, that act 382, improperly delegated legislative authority to the working group by empowering the working group to conclusively interpret the language of chapter 674, HRS, and define the standard for compensation. The court permanently enjoined the panel from applying the working group's formula and criteria in the process.

The way it was handled caused many native Hawaiians to be suspicious and critical. The Federal and the State governments do not have a good track record in protecting the rights of native Hawaiians.

I, like you, when I was sworn in to do my duty as an elected State Representative, was sworn to uphold and defend the Constitution of the United States of America and the Constitution of the State of Hawaii.

The beneficiaries of the native Hawaiians that are protected in the Constitution of Hawaii are defined and authorized through the Hawaiian Homes Commission Act. This act was enacted by Congress in 1920.

The beneficiaries of that act request your committee to exercise your fiduciary responsibility, that is set forth in this act, and assist the individual claimants in receiving payments consistent with Individual Claims Panel.

Their claims are no different from the native Indians, the Jewish people, and the Japanese Americans that were placed in internment camps after the bombing of Pearl Harbor.

Those Japanese Americans interned already got their reparations. native Hawaiians are almost likened to still be living in the internment camp; third class citizens not able to even elect those commissioners that make policies that affect our every day life.

I supported the idea to pay the individual claims through the Office of Hawaiian Affairs because they receive their revenues established in the state constitution on behalf of the native Hawaiians, as defined in the Hawaiian Homes Commission Act.

The 7,000 families now living on the Hawaiian Homestead, and the more than 20,000 plus applicants on the waiting list, are concerned about the threat on the Hawaiian Homestead, if this bill does not meet the goals that are stated in its intent.

Fourteen years ago, the Nanakuli Hawaiian Homestead Association, led by the president, Kamaki Kanahale, formed the State Council for the Hawaiian Homestead Association, SCHHA, as it is called, bringing together the majority of the Hawaiian Homestead Associations statewide.

Supported by the Department of Hawaiian Homelands, the SCHHA, at its 14th Annual Conference, held on August 18, 19, and 20, 2000, at the Airport Plaza, reviewed, discussed, and we had much discussion. But we came out with a unanimous vote to support the intent of S. 2899 and H.R. 4904.

The SCHHA's hopes are to protect the current programs and services for native Hawaiians, including the Hawaiian Homelands, the Native Hawaiian Education Act, and the Native Hawaiian Health Care Improvement Act.

I share the concerns of the beneficiaries who live on the 'Aina Ho'opulupula, as our kupuna's call this act. They want to take action if serious threats are made to the Hawaiian Homestead.

I pray this is not another "Wounded Knee." I feel the anger and violence in voices of those people. They even called me a "sell out" for supporting this bill. That is the climate.

I believe that we need to come with the aloha spirit, including even those who oppose it, in formulating a solution that we all can live together with.

There is no perfect government on this earth. With all its weaknesses, God Bless America. As a veteran of the United States Air Force, serving my country during the Vietnam Era, in 1968-72, as a aircraft electrician on B-52's and KC-135's, and having been spat on by an American protestor at the San Francisco Airport in 1971 protesting that war, I have a deep desire to seek justice within the frame of the laws in place now.

I render unto America like Paul writes in the Bible to render unto Caesar what is Caesar's, and render unto God, what is God's.

I have reservations with the section in the bill that creates a process to organize native Hawaiians without proper input and participation from the native Hawaiian community.

The Hawaiian Homes Commission Act qualified a native Hawaiian by a process that proved your ancestors lived here prior to 1778. That is when the Hawaiian Islands discovered Captain Cook, lost in the Pacific Ocean.

The bill expands the beneficial class to those descendants proving their ancestors lived here on January 1, 1893, when Queen Liliuokalani was overthrown.

I believe that the "blood quantum" rule in the Hawaiian Homes Commission Act is the invisible division that divides the native Hawaiian people; but more land and resources are needed to address all the needs of all of the native Hawaiian people.

The bill also places the office within the Department of the Interior within the Office of the Secretary of the Interior.

It also requests additional involvement from the Department of Justice, and authorizes the Attorney General to designate an official to work with the Department of the Interior in implementing, enforcing, and protecting the rights of native Hawaiians in their political and legal relationship with the United States. Can they now step in and protect the rights of native Hawaiians as defined in the Hawaiian Homes Commission Act?

I hope that Congress appropriates the funds needed to carryout all of the mandates to protect the rights of native Hawaiians in seeking political status, because we know that when the state acquired the mandate to manage the act, the Federal Government did not give them the resources.

In conclusion, I support the intent of S. 2899 and H.R. 4904, creating a process that provides the native Hawaiian community with the flexibility to develop the entity for a government-to-government relationship with the United States, while providing parameters within the framework of Federal law.

I hope that we may accomplish our goals in protecting the current programs for native Hawaiians, and assure a process that encourages many native Hawaiians to participate in the process that

will determine the future of not only native Hawaiians, but for all people of Hawaii, America, and the world.

I thank you from the bottom of my heart for allowing me to share my testimony. May God bless all of you, as we continue in this great debate.

Thank you.

[Applause.]

[Prepared statement of Mr. Kahakina appears in appendix.]

Senator INOUE. I thank you very much, Representative Kahikina.

Now may I recognize Mr. Joseph Reyes.

#### STATEMENT OF JOSEPH REYES, ELEELE, KAUAI

Mr. REYES. I did not prepare a speech or anything like that. But I just came here to say that I oppose this bill, because on the bill, we consider everything was done in December. Then why did it take so long to be presented for the people to look at it and understand what is going on?

The Hawaiians or the kanaka maoli people are not the most studious people pertaining to situations like this. They have to study the thing before they understand it. We can go out there and make anything else. But you do not see those guys up there, because they just do not get along.

So why is it when you had from January until August, why did you not send this thing out about 2 or 3 months ago, so people could take a look at it, and understand what is going on? You just bring it out in about 4 days.

I reject this, because I do not understand what is going on, unless I look at it a couple of times, and feel that the thing is right.

There was no annexation, to begin with. The 32,000 signatures from the kanaka maoli people proved that. But yet, the thing was done the opposite.

Then you have the State. This is our island, the kanaka maoli, the Hawaiians. But who voted to have this place be a State? Did you have hearings with Hawaiians coming in here to have their input and everything else? No, you did not.

Who voted this Hawaii to statehood? It was every other nationality. They did not come to Hawaii to benefit the Hawaiians, the kanaka maoli. They came here to fill up their pockets with money. They rip our land. They make money, and they are gone.

It is sad to say that [native word] is the only legitimate entity here, because the Hawaiians voted them in, not anybody else.

Now you want to get other nationalities in there. What nerve; well, I am so perturbed, I think I have said enough already.

Thank you.

[Applause.]

Senator INOUE. Now may I call on Clara Kakalia.

#### STATEMENT OF CLARA KAKALIA, KAILUA, HI

Mrs. KAKALIA. [Singing and greeting in native tongue.]

Aloha, Senator Akaka, Senator Inouye, Representative Mink, and Representative Abercrombie.

To have legislation or not to have legislation, this is the question the Hawaiian people must decide. This is the first event. A bill has

been introduced for Federal recognition on our behalf in Congress. We must take the opportunity now. We can never, ever have a second bill introduced in Congress.

My Ohana and I are supporting this bill.

[Interruption to hearing from audience.]

Mrs. KAKALIA. Please respect this kupuna please.

Concerning the definition of native Hawaiian, the Hawaiian community should create and determine the definition of native Hawaiian. Likewise, the blood quantum should be resolved by the native Hawaiian community.

First, a process in developing a roll call is inevitable, so that a native Hawaiian Interior Governing Council can be created. This council would establish a native Hawaiian governing body.

It is within this Hawaiian governing body our constitution and bylaws will be drafted. There is where, for our non-supporters, you can work into this constitution the rights and powers that are vested in the native Hawaiian government, and exercise those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the aboriginal indigenous native people of the United States.

Second, is to prevent the sale, disposition, lease, or encumbrance of lands, interest in lands, or other assets of the native Hawaiian Governing Body, without the consent of the native Hawaiian Governing Body.

Third, is to determine the membership of the native Hawaiian government, and;

Fourth, negotiate with the Federal, State, and local governments.

It is within this perimeter, Federal recognition upon approval by the Secretary of the Interior shall be recognized. So we urge the passage of this bill; mahalo.

[Applause.]

[Prepared statement of Mrs. Kakalia appears in appendix.]

[Interruption to hearing from audience.]

Senator INOUE. May I remind you that when Mr. Parr testified, he was not interrupted. We listened to him and respected him. May I announce the next panel?

Our next panel is Audrey Keesing, James Manaku, Sr., Paul Sullivan, and Marion Anderson Kelly.

May I recognize Ms. Keesing.

#### **STATEMENT OF AUDREY KEESING, HONOLULU, HI**

Ms. KEESING. Aloha; I suppose you want me to testify at this time, then. I have been called three times to testify this morning.

I guess you know that I am a cultural anthropologist. I am an international public health community health worker. I have worked for the feminist movement for a long time in Hawaii.

I have worked for the National Organization for Women, which gives moral support for and encourages political recognition of the indigenous Hawaiian people as an independent nation.

It is my understanding that it was a group of corrupt businessmen that overthrew the Hawaiian Kingdom, and that Grover Cleveland, our President, asked for the Queen to be returned to the throne. That is the basis upon all women's rights in Hawaii have

been taken away, because the civil rights and human rights of women have been denied from that time forward.

I believe that when I came here as a graduate student, I did not know this history at all. I had no idea that I was going to encounter something that looked to me like apartheid, when I discovered that there was blood quantum; when I found out that there would be people 50 percent above blood quantum that were offered housing, but that these houses would not be owned by the people, and that they would have to be thrown off the land if their blood quantum was less than 50 percent. This is the Homestead Act that I am objecting to.

I did not know that there were royal trusts that had been looted and changed and stolen, and that the land would be taken.

I did not know that there would be money laundering everywhere, and that the sex industry would be used for these purposes, and people like Milton Holt and other people would be using the money from the Bishop Estate Trusts to perpetuate some horrible acts on women, and women's value would be a commercial enterprise for the people of the tourist industry in Hawaii. I did not realize that education would not be valued.

I believe that there have been mistakes made, and they are egregious. They involve incarceration, hospitalizations that were unnecessary, criminalization that is unnecessary, genocide, and drugs entering into neighborhoods. I have personally been at one manalo, to throw out international drug dealers. I was almost killed that day.

There is terrorism by police force. People are forcibly arrested. I have seen people blow themselves up in houses to try to keep the land that they want to be part of. You cannot have any privacy in this State. Your social security number is on your driver's license.

There are collusions with insurance companies. When I was working for advocates for consumer rights, which is a Ralph Nader organization, I found out there were 20,000 people on the Big Island that could not drive because they had no insurance. That is a tremendous amount of people that could not go to the store to get diapers, without fear of being arrested.

I found out that people were being sold out by welfare, which was not adequate for a standard of living; that the social programs were not benefiting the people that they were intended to benefit.

I believe that Congress is the only group of people that can admit the crime, the crime on high seas; that the nation of Hawaii was not actually overthrown, because Grover Cleveland said that it was not; that Queen Liliuokalani was a de jure government.

Furthermore, I think that this bill may be a violation of the 15th amendment, which is the right to vote shall not be denied or abridged by the United States on account of race, color, or previous condition of servitude. There are many people that were here under servitude in the State of Hawaii that were not Hawaiian, who would understand what I am talking about in that instance.

Also, I have seen personally, as a human rights and civil rights leader, violations of the first amendment, the right of free speech, religion, press, assembly; amendment number 6, fair trial; amendment number 8, bails, fines and punishments that are cruel;

amendment 14, denying of the life, liberty, and property of the people of Hawaii.

I understand that all treaties made under the authority of the United States shall be supreme under the law of the land, which is section 5, number 2. That means that the treaties that the United States made with the Hawaiian people are enforceable, and they are supreme on the land of the United States.

In fact, my great-great-grandfather, or uncle, actually, was President Polk, who made the Friendship Treaty. I am the great granddaughter of the U.S. Commissioner for the South Pacific Islands, which is Felix Keesing, who founded the Anthropology Department here in Hawaii.

I believe that cultural anthropology is a precursor to civil rights; that if we do not understand that we are all equal, then there can be no civil rights.

I think the appropriate place for this to go is to the judicial branch which, under this article 3, section 2, is supposed to honor the treaties between foreign nations.

I wanted to tell you just how incredibly hurt I am, as a person who came here from the United States, believing in my Government, and how hurt I am by what my Government has done to the people here.

I want you to know of the incredible pain of not being able to sleep at nights, nights on end of agony, when I realized the incredible wrongs being done, and that I had no way to right them. That moved me to write this Indigenous People's Resolution with the National Organization For Women on July 3.

I think that is about all I want to tell you, except that a lot of my friends are dying, are sick, and I can do nothing about it. This is a really painful thing for me, because I really do love the people of Hawaii.

Thank you.

[Applause.]

Senator INOUE. Thank you, Ms. Keesing.

Now may I call upon James Manaku, Sr.

#### **STATEMENT OF JAMES K. MANAKU, SR., WAIANAE, HI**

Mr. MANAKU. Thank you. My name is James K. Manaku, Sr. I am not a Native American. I am a kanaka maoli.

Before I begin, please, if my words hurt, please do not take it personal, because this is not a personal thing. This is something that you folks accepted with the responsibility you accepted. If I am wrong, please correct me.

Anyway, I am here to speak on behalf of my family. I am the eldest of eight children, a male. I represent all my family. I represent my children and my grandchildren.

The problem we are having now is we are fighting with each other, and it is only because of the way we were programmed. You know, all of you can remember, right, going to school, saying the pledge of allegiance? All of you remember that, right; remember that part when it came to say, liberty and justice for all?

You know, it never dawned on me that it had no meaning, really. If you were not an American, it really meant nothing. There is

nothing wrong with America or Americans, either. You know, they have their own coliana. But we have ours, too.

You folks accepted this responsibility to come here and take care of us. Actually, you know, we really do not need you. We do not need the Hawaiian Homes, we do not need all of these monies that you folks say we need.

You know, if we go back and you folks just take care of what was wrong and paid us, and left us alone, we would actually survive. We would actually survive. Can you believe that?

It is mind boggling, but here in our life, we could actually survive. We could make our nation, and we would not exclude anyone.

As you know, Hawaiians never excluded anybody. But if you go to the Mainland, the continent, now you may see a different story there. There is no liberty and justice up there either.

Anyway, seven years ago, people came to us and said, you know, we were wrong. Today, we have to go through all of these people and make a fast decision, because next month or the month after next, everything will be gone. I mean, my goodness, is that what America is all about? I thought it was such a democratic process.

Even if this Administration does not do anything right now, that does not mean the next Administration will not, either. I mean, is that what America is all about?

I have to know, because I was one of those proudly saying, liberty and justice for all, because there was only two kinds of worlds in my time. There was the Communist world and there was America.

In the Communist world, they gave back countries to the countries that they stole. Remember the Berlin Wall? We all remember that. But what happened when they broke it up? Russia, who was one of our greatest supposed enemies, became humane, of all the countries in the world.

This was confusing for me, because in my younger years, I never knew about my history. All I knew was, George Washington, Abraham Lincoln, and that is it. The North fought the South. That is all the history I learned.

What I learned in my own history was that Komayamaya united us. But you know what? He never united us to have us be taken away by another country; by supposedly the greatest country in the world.

I mean, really, America is supposed to be the greatest country in the world. What is happening here? Why do we have to go through this process?

You know, they say this bill will not hurt the Hawaiians. Well, look in our papers. Americans are running for our positions in our offices, because they say we are not right.

Yet, we are supposed to believe that this bill will help. How can it help? We already get Americans saying that it is not right for us to be separated from them because, hey, in America, everybody has rights.

But, you know, the bottomline is that as a concerned parent and grandparent, I do not want to go back. I mean, you folks have been in Washington all these years. We will have to compete against 556 other nations or recognize sovereign nations in America, and we still have got 170 more that want to be recognized; or 171, with us.

But we do not want to be recognized. We do not want to be an America. Like I said, there is nothing wrong with being American. But, you know, I am proud to be Hawaiian; I am really proud.

It makes me feel so wonderful when I look in the world, when I look in the history books, there is not only Communists in American countries. There are actually other nations, there are actually other people out there that have their own freedom.

You folks have seen what happened. I mean, are you folks not aware? Do you folks not know all the history of what happened to us? I mean, we are American. I was not borne an American, but we are Americans. Is that not what you folks are supposed to be doing?

To the gentleman of Samoa, I sincerely pray that you folks do not become the 51st State. Really, I am serious. Look at what is happening to us. You are Samoan today. Tomorrow, you may be an American. There will be no Samoa after that, no matter where your land is, in Samoa.

I am not talking only about Samoa. Excuse me, I am not trying to offend you. But what I am trying to point out to you is that your families should not go through what we are going through. That is the sad part.

I am totally against another part of this bill. I have to share this before I turn this over, if I may. You folks are trying to determine if a Hawaiian that was here in 1893, January 1. You know, there are a lot of foreigners here. Will people like Twig Smith be a Hawaiian, 100 percent Hawaiian? Because by this 1893 designation that you folks are making, he is a Hawaiian. He was here at that time.

Anyway, we need to look at that. That is a important. Do not move the dates. You know, every time you move the dates, foreigners become Hawaiians. Eventually, 1 day, a full blooded American, well, he is going to have to give up his rights. But a full blooded person or anybody can become Hawaiian, and that is not fair.

Thank you.

[Applause.]

Mr. MANAKU. And, you know, for all of us out here, this is not the only time. After this bill, hey, we can still come up with another one, or maybe a better one. But after this October 6, it is not the last chance for us. This is not the last chance.

You know, our families woke up one morning terrified. Hopefully, one morning when we wake up, we will not be as terrified as they were.

Thank you.

[Applause.]

Senator INOUE. I now call upon Paul Sullivan.

#### STATEMENT OF PAUL SULLIVAN, HONOLULU, HI

Mr. SULLIVAN. Thank you, Vice Chairman Inouye, Senator Akaka, Representatives Abercrombie, Mink, and Delegate Faleomavaega; aloha and good afternoon.

My name is Paul Sullivan. I am an attorney by profession, and so I will start with the small print. I am not representing my employer or any organization that I belong to. My opinions are not



necessarily theirs. I am here on my own, to share with you my thoughts about this bill.

For the hearing, I submitted detailed written comments on various findings and policy statements of the bill. I will accept Senator Inouye's invitation from yesterday to submit a revised version in a few days. I appreciate your listening to my oral testimony, but I ask the committees to consider my written submittal, too.

What I am about to say will be perhaps offensive and painful to many in the room. I will apologize in advance for the pain. But I hope you will have patience with me and with the others who speak against this bill, and who have concerns that may not parallel your own.

I understand that this bill is intended to save native Hawaiian programs from the consequences of *Rice v. Cayetano*. That case, as you know, held that the definitions of "Hawaiian" and "native Hawaiian" in the State's OHA legislation were racial.

But this bill does not get away from race. In *Rice v. Cayetano*, the court said, without any qualification, that those definitions were based on ancestry, used as a proxy for race, and were, therefore, racial.

S. 2899 now mandates the same sort of ancestral inquiry condemned by the Supreme Court, just like the definition of "Hawaiian" in the *Rice* case. This bill divides Hawaii's citizens by ancestry into two groups. One gets to form its own government, like an Indian tribe. The other does not. This will not work.

The Supreme Court has said that while Congress may recognize a tribe, it may not arbitrarily create one where no tribe exists.

Native Hawaiians are thoroughly integrated into the society of Hawaii and the Nation. As a group, they do not possess the traits of tribes. So how likely is it that the Supreme Court will uphold a statute that attempts to create a governmental entity out of what the Court will see as a racial group? So the bill sets up native Hawaiians for another round of having their hopes raised and then defeated.

I am sorry to take issue with Senator Akaka and those who assisted in drafting this bill; but the bill's findings about aboriginal indigenous peoples, about the sovereignty of native Hawaiians, about the ceded lands are not likely to hold up in the Supreme Court. I have explained why in the written testimony that I provided for this bill.

Many native Hawaiians were shocked and angry at the *Rice* decision. You have heard some of that anger this morning. Now they are being told that this bill will fix things. But the *Rice* case suggests that this bill will just create more disappointment.

It is not clear what will work. Perhaps the claims of stolen lands and lost sovereignty do not have a place in the post *Rice* world, and some new mechanism must be devised by which native Hawaiians and those in the State of Hawaii can somehow achieve the reconciliation that Senator Akaka desires.

But whatever you do, please do not pick something that will just fail in the Supreme Court. That does not do any good at all, and it hurts.

Thank you for your kind consideration.

[Applause.]

[Prepared statement of Mr. Sullivan appears in appendix.]  
 Senator INOUE. Thank you very much, Mr. Sullivan.  
 Now may I recognize Marion Kelly.

### STATEMENT OF MARION KELLY

Ms. KELLY. Aloha; can you hear me?

Thank you very much. My name is Marion Kelly. I am here to testify against the Akaka so-called Recognition Bill.

[Applause.]

Ms. KELLY. I wish to point out that this bill is flawed from the very beginning. This bill asks the United States to recognize native Hawaiians as Native American Indians. We all know that Hawaiians are not Native Americans.

This bill asks the United States for a trust relationship. How we would love to trust people. But then who do they have to trust? That would be the wards, the people who cannot take care of themselves.

Well, not under this bill. In this bill, they will have a trust-ward relationship, and you will be the wards. You will be the wards, wards who need someone to take care of them, because they are incapable of taking care of themselves. That is what a trust-ward relationship is, right? Do we want it?

We know that the independent Hawaiian Kingdom was stolen from the citizens and its Queen Lili'uokalani in 1893, with the help of the U.S. Marines. They invaded Oahu from the USS Boston on January 16, 1893, right?

We also know that in 1897, the citizens of the Hawaiian Kingdom presented to the U.S. Congress petitions containing over 38,000 signatures. This monster petition told the U.S. Congress in no uncertain terms that the people of the Kingdom of Hawaii did not ask for, did not agree, and did not want annexation, right?

The petition signed by the citizens of the independent Hawaiian Kingdom prevented the U.S. Senate from obtaining the two-thirds majority vote required by the U.S. Constitution to annex another nation; in this case, the independent Kingdom of Hawaii, right?

However, the American Government was not led by people who followed the U.S. Constitution. It was, and apparently still is, a military-led Government, determined then and now to remain a world military-colonial power at the expense of innocent, independent native peoples.

[Applause.]

Ms. KELLY. In January 1898, the United States took over Hawaii unconstitutionally. We know that. In February 1898, the next month, the United States declared war on Spain. It took over Guam. It took over Cuba. It took over Puerto Rico.

The war against Spain lasted only 4 months. In the Treaty of Paris that followed the end of that war, the United States paid \$20 million to Spain for the Philippines.

The United States warships forced the people in the Peoples' Republic of the Philippines into submission, and the United States took over and continued colonial control over the Philippines, as Spain had done for 500 years before that.

In 1900, the United States took over what is now known as American Samoa. The U.S. Navy had a ships' coaling station since 1872 in Samoa.

If we are honest, we all know that the annexation of Hawaii by a Congressional Resolution in 1898 was made against the wishes of the Hawaiian people, and it was an unconstitutional farce motivated only by military power and colonial control over the people of these islands and their independent nation.

Again, we go through another United States process to confirm all that history as being legal, when it was illegal.

We have gone through this so-called recognition process before. Do you remember the native Hawaiian Study Commission going on almost 20 years ago? The native Hawaiian Study Commission Volume I of the two reports cleared the United States of any responsibility for the takeover.

Look to the source: Nana i ke Kumu. Volume I was written by the commissioners representing the U.S. Government position. That is not surprising at all.

Then you come to volume II, expressing the opposite conclusion: Nana i ke Kumu. It was written by the Hawaiians on the commission. That was going on 20 years ago.

Yes; we have gone through this before. The so-called Apology Resolution just 10 years ago actually reversed volume I by admitting the many acts of colonialism and cultural genocide against the Hawaiian people; so what; nothing.

Seven years later, we are still living in a colony. Now they tell us to jump through another hoop in order to get money from Congress. Do you believe this?

This Akaka so-called Recognition Bill is being claimed to save the Hawaiian people a lot of money in Congressional funding that may not be available otherwise. When the United States gives all the ceded lands back to the Hawaiians, they would have plenty of money for any Hawaiian programs.

[Applause.]

Ms. KELLY. Is it not time for justice to be served? If there were justice, there would be billions of dollars of reparations paid to the Hawaiian people by the United States for illegally invading and helping traitors steal the Independent Kingdom of Hawaii in 1893, and in 1898 for annexing an independent nation without the consent of its people.

[Applause.]

Ms. KELLY. This is the history. You know it. What are we doing here?

Many Hawaiians know, or are about to understand, that there is no justice in the American system. This bill submitted by Senator Akaka and supported by Senator Inouye is a traitorous document that will put the Hawaiian people right back behind the colonial eight ball.

The rights allowed Hawaiians in this bill will allow them to decide which roads to pave on their reservation, and on which reservation, Nanakuli or Keaukaha, to allow what United States corporation to build a casino.

Under this bill true independence is given up for a few million dollars that still have to be begged from Congress every year; or is it every 2 years?

As is, this bill kills any form of Hawaiian independence. The Departments of the Interior and Justice have nothing to do with true independence. That is what they told us in December. We asked them, and they said, no, you must talk to somebody else; they told us in December.

Unfortunately, their plan locks Hawaiians into a wardship from which there is no way out.

In summary, this bill says Hawaiians will be able to continue to beg Congress for funds for Hawaiian programs. This bill claims Hawaiians are Native American tribes. We know that Hawaiians are not Native Americans. They do not have tribes.

Hawaiians are *kanaka maoli*. They are descendants of the citizens of the Independent Kingdom of Hawaii. Let Hawaiians decide what they want and when they want it.

Thank you very much.

[Applause.]

Ms. KELLY. Are there any questions, Senator Inouye? I would be very happy to answer any questions.

I teach at the University of Hawai'i at Manoa. I have been teaching a class there in land tenure for about 20 years.

I understand what the ceded land problem is, and I understand what the United States' position is. I just do not see this bill as being anything good for Hawaiians.

[Applause.]

[Prepared statement of Ms. Kelly appears in appendix.]

[Interruption to hearing from audience.]

Mrs. MINK. Mr. Chairman, I cannot sit here and be insulted. I think I will leave.

[Interruption to hearing from audience.]

Mrs. MINK. I am not insulting anybody.

Senator INOUE. I have been extremely patient for the last 2 days. We have listened to your testimony.

[Interruption to hearing from audience.]

Senator INOUE. May I be heard? May I be heard?

[Interruption to hearing from audience.]

Senator INOUE. May I be heard?

[Interruption to hearing from audience.]

Senator INOUE. I am not a member of Kamehameha School.

I have been extremely patient all day today and all day yesterday. We have listened to your statements. We have permitted you to demonstrate. The Police Department is here to take you out, but I said, no, we want you to stay here. But the least you can do is to permit those who wish to testify, to testify without interruption.

You speak of aloha. You speak of democracy. Let us demonstrate that.

Our next panel is Na'unanikina'u Kamalii, Judge Thomas Kalukukui, Jr., and Chief Maui Loa.

[Interruption to hearing from audience.]

Senator INOUE. Now may I recognize Ms. Kamalii.

## STATEMENT OF NA'UNANIKINA'U KAMALII

Ms. KAMALII. [Greeting and testimony in native tongue.]

Chairman Inouye and members of the Senate committee, my name is Na'unanikina'u Antoinette Kamalii. I am kanaka maoli, born and raised in Hawaii. My ancestors and I can be traced back over 100 generations to the beginning of time, as expressed in our creation chant, the Kumulipo.

I am a member of the working group. I was asked to serve by Senator Akaka, and I served, humbly. He is an elder to me. During these past few months, I have gone to the community, as best I could [testimony in native tongue] and I have listened.

My great grandfather, Robert Napunako Boyd, was a loyal subject of King Kalakaua. He was in the study abroad program. He was called home and that program was cut when there were problems here at home. They were all called home. We know why. There was unrest here.

I imagine that he was present in the Iolani palace on the date when our flag came down, as it was lowered and later stripped, disrespected by those men who the United States came to recognize as the legitimate leaders of a new provincial government.

My grandfather served. He assisted those who were hurt during the war. He served on a council. My mother, Kena'u Kamalii has served, and for 30 years she has worked in the sovereignty movement. Under her leadership came the minority report on which we based the Apology Bill. I have witnessed much as a child throughout my life.

Senator I have read S. 2899, and in the context of asking to serve on the working committee, I have listened. I have tried to express my opinion among the elders in that group.

The discussions have shaped my thinking on the bill. It is overwhelmingly clear that the U.S. Government's role in the overthrow of the Kingdom of Hawaii, as expressed by our *kopona* is not *pono*. The actions of the United States have been less than honorable, expresses the Department of Justice. I would agree, especially with the taking of lands.

There has been disagreement in the interpretations of facts under American law. Nonetheless, because the United States' role in the illegal overthrow of the Kingdom of Hawaii and the events, including the Admissions Act, the Annexation of the State of Hawaii, that have followed were not *pono*.

The U.S. Government has an obligation to make things *pono*, or make them right by our people. Many past wrongs have resulted in suffering by kanaka maoli. The United States has a responsibility to address kanaka maoli concerns, and I use the term "kanaka maoli."

We will continue to seek reparations and redress from the United States, the world court, the United Nations, and other international bodies, and will continue to do so, generation after generation after generation, because of our obligation to our *na kupuna*, *aumakua*, and the *aina*.

The Ku'e petitions in protest to the annexation of the United States will always, always be remembered by our people. The thousand of signatures of kanaka maoli relatives are very compelling.

For me, that is the greatest way; recognition of a people, an indigenous people under American law; the restoration of a nation, held by those signatures in those Ku'e petitions.

I support the intent of the United States, insofar as it attempts to formally address or express a policy regarding its relationship with kanaka maoli. Many in the community have questions whether they can trust the United States, given over 107 years of relating with the United States.

I have heard affirmed that the community neither wants the United States to extinguish their rights to self-determination, nor that this bill prejudices kanaka maoli for redress and reparations in the international arena.

There is question whether expressly stating, as this bill does, that the trust relationship between the United States and the kanaka maoli goes too far.

The beneficiaries to this formal trust relationship have never given consent to an express trust relationship. Further, the duration of this trust, the assets, and the corpus are all unclear. As I listened to the Department of Justice, that is something we will have to battle for in the future.

Further, instead, the United States has created an implied trust, presumed from circumstances as indicated by several laws passed by Congress to benefit native Hawaiians, which address health, education, and welfare of kanaka maoli. I have participated in some of those acts, asking for more moneys for Hawaiian health, 6,000 of our p'hua left; less than an auditorium, in some respect.

These Federal programs have been essential in the continued survival of our people, and must not be placed at risk by Americans who challenge programs benefitting native Hawaiians under race-based American laws.

I agree that it is within the United States pursue to organize itself to address the needs and concerns of the kanaka maoli. Therefore, it appears reasonable that an Office of Special Trustee for Native Hawaiian Affairs within the Department of the Interior, that the Department of Justice designate, and that a native Hawaiian Interagency Task Force be established. That is your kuliano, the United States kuliano.

As the Department of Justice testified yesterday, they felt it was necessary that the Secretary get involved, very closely involved, with limited discretion, because it would further or speed up this process of dealing with the kanaka maoli.

Kanaka Maoli concerns are not best served under the auspices of the Bureau of Indian Affairs. We have heard must testimony that we are not Indians. Our history is very unique, because we were a peaceful nation. We did have treaties with several world powers. It is a different history.

There was a word in the *Rice* case that I took note to. The word was, settle. This led me to think that it was the intent that those Americans who came here to settle. When you look at the English definition of settle, it refers to the word "colonize." There was intent to colonize us.

As you further look at the *Rice* case, they even distinguish between those immigrants from our perspective, Europeans and Americans, as to those who came later, Asians, Filipinos. They

called them immigrants. So I note that it really was the intent of those Americans to settle or colonize us.

Section 7 of S. 2899 has created the most controversy in the community meetings. Most agree that the bill must contain provisions to support the process that will meet all international requirements for self-determination.

I think most Hawaiians agree to that; that we can get through this, and we want to get on with the business of governing ourselves. Some have even expressed the need for a decolonization process, funded by the United States. I grew up in an American society, in an oppressive environment. I struggled to learn my culture, to know the meaning of hoponopolo, a language I was not taught because my mother was told not to speak it; and to become a warrior under programs that have been created. Because I dream things that are Hawaiian, I see warriors, and I see battles that will not go away.

The United States wishes to express a way in which we can organize ourselves, and at least express it as a model. Give us the respect that we deserve. We know how to organize ourselves. We have been trying. The only deterrent has been funding. We cannot even get poopona from Molokai here today for the lack of funding.

We have requested, as a working group, funding to teach those who are on the Mainland of our continent about what is going on today. We were denied funding. I know that it is not available to your committee to provide that to us. But for the United States, well, that is perhaps part of the obligation to allow us to get through this process.

Finally, there has been question as to who we are and where we came from, as expressed in the bill. There has been much discussion about the definitions, the multiple definitions, of native Hawaiians.

Much hurt will continue if the United States continues to fit us into a box by providing erroneous definitions of who we are. It is my understanding that the finding is necessary to implement American law, and this is difficult.

I have thought about this daily. I do not think, at this point testifying to you today, that I ever want the United States to define who we are.

[Applause.]

Ms. KAMALII. I understand, however, that it is difficult within the context of the legislation that must be passed to allow us to accomplish what we must do in respect to our continued consultation between us as a people to accomplish what we desire and, I believe, what the United States desires. That will be difficult.

It may be that the United States, to implement its policy relative to us, may have to use a definition of a native Hawaiian in the way that it believes that it needs to, to implement acts and to have services and programs flow to us.

However, so long as those definitions do not in any way whatsoever limit our ability in the international arena or preclude us, as I have seen in other areas, from making claims to our lands which were wrongfully taken, the first of which is where the military bases reside, then I guess the United States must define us, somehow.

Thank you for this opportunity to testify today. I will turn the mike over to you, if you have any questions, Senator, or anyone else on your committee.

[Prepared statement of Ms. Kamalii appears in appendix.]

Senator INOUE. I thank you very much, Ms. Kamalii.

Before I call upon the Judge, may I invite Tony Sang to join the panel.

Now may I recognize Judge Thomas Kaulukukui, Jr.

#### STATEMENT OF JUDGE THOMAS KAULUKUKUI, JR.

Mr. KAULUKUKUI. I begin as I should by offering our love, honor and respect to Ke Akua, who brings us all together today, who watches over us, guides us, and protects from the directions from which all the great winds blow, from the mountains to the sea, from the zenith to the horizon, from where the sun rises at the eastern gate, to where it sets into the western sea.

I honor our ancestral guardians, who came in here with us, the guardians of the night and the guardians of the day. I honor the spirits of this land.

I honor those elders who have passed on before, including our Alii who have blessed us with their legacy; Paramount and other chiefs and their descendants who may be present; our elders who yet live and who guide us with their wisdom in our respective communities; our honorable Senators, our senior Senator, our Congressmen and women, our Representative from Samoa; and all others who are part of this illustrious committee and their staff; and any other of the leaders great and small who are present today; and all of our other friends, friends, family, and relatives who may be present here today. Aloha.

I have friends on both sides of this bill. I have family on both sides of this bill, each with their hearts pure, with their minds clear as to where and how they wish to go.

I testify today as an individual and as a family representative of the family of Thomas Kaulukukui, Sr., who is my father, our extended family that flow from them, and their descendants, and the great river of ancestors who flow backwards from them.

I testify in strong support of this bill, and I urge its passage by the U.S. Congress. I also testify in support of any House resolution or any companion legislation or resolution that may support the intent of this bill.

In giving this testimony, I rely not upon my own personal opinion, but on the wisdom of my ancestors, my father, my mother, and those of my family who have wisdom that I respect.

I rely also upon my own feelings in my gut as a Hawaiian, and also in my experience in trying my best to follow in the footsteps of my family in serving this Hawaiian community: In the field of law as a judge, where many of the defendants who appear before me were my people; as a past commissioner of the Hawaiian Homes Commission, trying to serve our people in the field of housing; as one who worked for 6 years on health programs, serving the legacy of Queen Emma for the Queen's Medical Center; and in my current position as the Trustee of the Queen Liliuokalani Trust, trying to serve orphaned Hawaiian children.



S. 2899 expresses the policy of the United States regarding its relationship with native Hawaiians. Since you drafted it, you know perhaps better than anyone the particular provisions that are in there. But I wish to touch very briefly if I might, Senator, upon some of them, and why I think it will help us.

It results in formal Federal recognition of native Hawaiians as a distinct and legally cognizable group. I think all Hawaiians agree that no legislation, State or Federal, will define us. We are who we are, and we have been who we are for thousands of years.

But the legislation aligns Federal law with what we know in our gut, with what culturally and spiritually we have known for years, for generations. It provides, in effect, in my mind, a Federal ritual. It is like a Federal chant, as far as I am concerned.

Hawaiians have their own chant. We have our own spirituality. We have our own culture. But when we interact with other cultures or other bodies, we understand that there is a ritual that we must go through.

In this particular case, in my opinion, this is a Federal ritual. S. 2899 is a Federal chant. In order for us to move along the path, although it will not solve all of our problems, we need to get past this recognition ritual.

In every Polynesian culture, there is an entry ritual and a recognition ritual. All this is, to me, albeit it an important one, this S. 2899 is a recognition chant. I think we ought to chant it and move on for us, as Hawaiians, to determine our own destiny. I believe it is the first step.

I also believe that this bill will help preserve and protect the current Federal programs for native Hawaiians. In my experience, I have dealt with Hawaiian housing, Hawaiian health, and social programs for our Hawaiian children. I am a former school teacher, so I have dealt with education. I am beneficiary of Bernice Pauahi Bishop's legacy, because I am a graduate of Kamehameha School.

In those experiences, what I have found is that we cannot do the things that we need to do alone. The trust relationship that the Government has to Hawaiians, in part, for the things that have passed on before in history, must be fulfilled. They must be fulfilled, not only with regard to talk in that regard, but as you have been so ably involved in, it must be fulfilled in terms of money to support programs to help our Hawaiians.

I am concerned that without Federal recognition and without status, that many of the programs that help support the social programs for our Hawaiians will fall by the wayside.

In my experience, we Hawaiians find ourselves statistically at the top of every list that you want to be at the bottom of, and at the bottom of every list that you want to be at the top of. We have the highest crime, and I am not going to go through all of that. Our health is terrible. Our education statistics are poor. I have more than a passing knowledge of that, because I have worked in those fields.

I think it is very important that we take the steps possible to preserve the things that we must preserve, so that our programs may be preserved. S. 2899 will do that.

The third thing that I think is important is coordination of the policies and programs of all of our Federal agencies. I have served

to benefit minority veterans, being the Hawaiian representative on a Federal Congressional committee.

One of the things that came out of that experience in Washington, DC is that there are disparate treatments; disparate and different disjunctive policies between our Federal agencies. We need to do something about that, so that it can be coordinated.

One of the intents of this bill is to do just that; to coordinate the Federal agencies that have to deal with Hawaiians, and to provide for us to start our step along orderly self-government.

I say "orderly" and I say "self-government." Self-government means that we will govern ourselves, and not ask anybody else to do that.

We Hawaiians, we love to fight and we fight to love. That is just the way we are. You know, sometimes we fight and love at the same time. But it is our thing, and we do not like anybody else messing in our love or messing in our fight.

So we will govern ourselves. I think that this Senate Bill moves us at least a step along the way, where we can take an orderly step towards self-government.

My last point, and in my last point, I support what Na'u had said earlier, that this bill will help achieve pono. Right now, things are pono'ole. They are not just and they are not correct. They are out of balance.

We know who we are. We always have been native Hawaiians, and we always have been a separate culture. But we are schizophrenic, because in the law, we are not recognized as that. I think this will achieve that, and achieve pono.

In closing, because I see my time is up, I hope that in the future, my only grandson will be able to say that at the time that annexation came up, his great-great-great-grandfather Kaulukukui and his grandmother Manena signed their names to that petition, and wanted to preserve Hawaiian identity; that his great-great-grandmother, when statehood came up, opposed it, because she was afraid we would lose our identity; that his great grandfather, Thomas Kaulukukui, Sr., my father, when the State recognized the importance of the Hawaiian culture and the Hawaiian entity by forming the Office of Hawaiian Affairs, served for 12 years, and helped in the ceded lands settlement.

I hope that he will be able to say that at some point in his generation, that we took a step that was an important one. We chanted the ritual chant, were recognized by Federal Government, and moved on to our self-government.

I thank you for this opportunity to testify.

[Applause.]

Senator INOUE. Thank you very much, Judge.

Now may I recognize Chief Maui Loa.

#### STATEMENT OF CHIEF MAUI LOA

Mr. MAUI LOA. Aloha, Senator; aloha to the U.S. Senate Committee on Indian Affairs, S. 2988; aloha to the U.S. House of Representatives Committee on Resources H.R. 4904; honorable members of this committee.

I extend my special thoughts for recovery of a blood son of Hawaii, Senator Akaka, and Senator Inouye in this legislation.

The Kalaeloa land claim is one of the largest and soundest of the hundreds of original owner land claims. The Hou Lahuiohana tribe holds the record in U.S. law with respect to the issue of reparations owed to the beneficiaries of Prince Kuhio's Act.

As a principal leader, combined with my family, now for over 50 years as the hereditary Chief, I am putting to one side my own action for loss of dominion and sovereignty, and now support the proposed legislation of Senator Akaka.

Do not mistake my support for weakness or blind obedience to the State. I fully expect to realize each claim we have through the proposed government. If it looks like the state is going to use this new government to look after its own interests and tries to muscle aside the rest of us, I will withdraw my support.

The best way for the Federal and State governments to win and keep the trust of the native Hawaiian people is to appoint me to sit on the Interim Governing Body where I will seek an elected seat on the permanent governing body.

If the proposed bill truly helps develop the economic interests of all of us, it will work. If it is going to be business as usual it will not work.

It is said that Government obeys the will of the people. For decades the State government has known to follow our legal and political work because they know we have been following the path of United States law through the native Hawaiian landscape. They have tracked us because they knew we were following the right path.

Now there comes a moment in history where it appears that the State and Federal Governments have no place else to go so they must finally place themselves openly on the same path that we have always been on.

For this reason, I choose to trust the governments of the State and the United States, so I testify in support of this legislation.

Time will tell if this legislation is a move that protects the Government's interests but slights the native Hawaiians' interests. If history is any judge, because history tells us that time after time after time this is what has always happened, then the past tells us to be on guard.

The best safeguards are found in the opportunity the bill presents for me and native Hawaiian leaders who do not work for the two governments, the State and Federal Governments, to sit on the interim and permanent native Hawaiian governing bodies. We will not have to sit idly by to wait and see if history is going to repeat itself.

While these two governments use public funds to meet the expenses that arise because of this bill, we must personally and privately carry these expenses ourselves, and this is unfair. We have to provide the funds to meet the enrollment conditions and pay for expenses associated with politics connected to this legislation.

Finally, we have watched our land disappear starting when westerners first colonized our country. Now we are going to govern ourselves directly with the United States. This is being done to protect the interests of the state in native Hawaiian affairs.

But not only State government agencies have native Hawaiian land that once belonged to the original families. Not only Mission-

ary Trusts have native Hawaiian land that needs to be governed by native Hawaiians directly with the United States.

It is only when all native Hawaiians are fully and directly included and empowered equally in this new government-to-government legal and political relationship that we will be able to recognize this legislation as justice.

If it is not, we will continue to fight for justice in the courts, in Congress, in corporate board rooms, in the council chambers of our Native American brothers, in the media, on the roadsides and beaches of our former country, forever, if necessary.

Respectfully submitted, Maui Loa, Hereditary Chief Kalaeloa Kalakaua Kawaioloa Lono Makahiki Ehu Hou Lahuiohana a Church of Hawaiian Nei, made by native Hawaiians, Hawaiian Ethnic Art Museum, Umi community association, Hou Kula School, native Hawaiian Ohana Alliance, Hou Hawaiian Computer-Tech and Art School, native Hawaiian Trading Post, Maui Pohaku Loa Statue; mahalo.

[Applause.]

[Prepared statement of Chief Maui Loa appear in appendix.]

Senator INOUE. Thank you very much, Chief Maui Loa.

Now may I call upon Tony Sang.

#### STATEMENT OF TONY SANG

Mr. SANG. Aloha, kakou.

I want to thank the Senator and his Committee on Indian Affairs, and our Representatives from our Congress, for allowing me this opportunity to speak on the bill that is before us.

My name is Tony Sang. I would like to testify on two points: First, as an individual; and second as the chairman for an organization that is called the State Council of Hawaiian Homestead Associations.

I have been a lessee and a beneficiary under the act of 1920 that provides me an opportunity where I lease a little portion of land that I can call my own. I have lived there for 32 years. I have raised seven children, and they have more Hawaiian blood than I do. But I worked for what I have, and I am very proud to say that I support this bill in its entirety.

I understand there are problems in the bill, but this is the first step toward doing something about the problems that existed before in history, the problems that came up during the course of these years, and the problems that exist today. There needs to be something in place for us to be able to resolve all of these problems.

I was very fortunate to be appointed by Senator Akaka to sit on the native Hawaiian Working Group. It gave me an opportunity as a native Hawaiian to finally say something about the problems that we have had throughout the years, the problems that we have seen, the problems that we are about to see, and the problems that exist today.

I have tried my utmost as an individual, sitting on this committee, to come up with something that I feel is something workable for everybody to benefit from. It was a hard decision. They started up with 25 people, and we ended up with about 4 or 5 people.

But during the course of these meetings, we invited every organization that wanted to come to bring their manao to come to these

meetings and voice their opinions, and give their comments about the bill. It was not an easy decision for me to make, as a native Hawaiian or as a person whose ancestors go back before 1878. It was not a very good experience.

But it is my hope that the time that I gave and the recommendations that I put into it will benefit all our native Hawaiians.

I would like to speak on the perspective and the viewpoints of a Homesteader, and at this time, I would like to talk for our organization, which is called the State Council of Hawaiian Homestead Associations.

When I signed in, Senator, I did provide the person at the registration table a brochure to introduce our organization. She should be passing it out to you to identify our organization.

Earlier this year in March 2000, I had the privilege of attending a Native American Indian Housing Consult Convention in Alexandria, VA. I attended this convention among all the Native Americans that came to this convention, which numbered about 300 people.

In the experience in the days that followed, and when we sat down and talked about the problems that existed within their homestead or in their reservations, I came to realize that these people have the same kind of problems that we have. You talk about poverty. Yes, they have it. You talk about health. They have it, too. Everything that you can name or talk about, the Native American Indians experienced.

So I could relate with them. I could feel the pain that they went through. In their experience and their history, people died. They died for what they thought was right. They gave their lives for what they thought was right.

To me, it does not matter, when we talk about our definition. It really boils down to where you came from. The Native Americans are the indigenous people of America. Alaska Natives are indigenous people of Alaska, and our people are indigenous people.

[Interruption to hearing from audience.]

Mr. SANG. I think everybody can agree with me, with a definition that says, if you give me a chance, to say that we are indigenous and we are aboriginal. That is what I am saying.

If the Native Americans can agree to that and the Alaska Natives can agree to that, I do not see any problem with us trying to agree to that. We can come to some kind of consensus to say a definition under section 7, that we are indigenous and aboriginal.

In March of this year, after I came back, at our equality conference, our organization took up the problem of the *Rice v. Cayetano* issue. We knew there was a problem because there was a threat under the 14th Amendment that the Hawaiian Homelands Act might become threatened.

So with the advice and consent of the people that belonged to our organization, we developed and created a plan that we thought would protect our native Homesteaders from the threat of the 14th amendment, which was to seek Federal recognition and political status.

In August of this year, our organization met at our annual convention. A proposal and a resolution were introduced to our dele-

gates. It was approved and ratified by our delegates to support the bill.

At this time, I would like to read our resolution. This comes from the people that represent people that belong to our organization, who are homesteaders:

A resolution to support Federal legislation necessary to express the policy of the United States Government and define the special political relationship with native Hawaiian:

Whereas, the State Council of Hawaiian Homestead Associations shall represent the interests of 30,000 or more Hawaiian homestead beneficiaries who reside on Hawaiian Homelands, and have maintained communities distinct from other populations.

When we are talking about 30,000, when you say that number, we are so great that there are 6,000 lessees now that have leases in their hands who live on our land. Within the 6,000 lessees, there are an average of five people per household. So we count them as being part of a beneficiary under the act.

The stated purpose of the SCHHA is to advocate for policy and legislative changes that will protect, preserve, and defend our Hawaiian Homelands Trust, as defined in the Hawaiian Homes Commission Act of 1920, as amended;

Whereas, in 1987, SCHHA exercised its own self-determination by voting to support the lowering of the blood quantum as defined, and the HHCA, with the objective of using a sliding scale to lower the blood quantum to 1/32nd percent, effectively creating a single class of native Hawaiians, as defined by HHCA;

Whereas, native Hawaiians, as defined by HHCA, have a common identification, ancestrally and racially, as a group of native Hawaiians, and they have continued historical maintenance of political influence over members of their group and their non-affiliated homestead communities, and they are not part of a presently recognized tribe;

Whereas, the SCHHA organization consists of elected officers representing the interests of more than 30,000 Hawaiian homestead beneficiaries, representing native Hawaiians who reside on the islands of Hawaii, Maui, Kauai, Molokai, and Oahu;

Whereas, the Twentieth State Legislature, Regular Session of 1999, State of Hawaii, has passed several resolutions urging Congress to develop a government-to-government relationship between native Hawaiians and the Federal Government; and

Whereas, there is an urgent need for Congress to effect a clear statement about the political status of native Hawaiians and acknowledge that native Hawaiians are a distinct indigenous people, who have a special trust relationship with the Federal Government as a result of their unique history, and native Hawaiians have the right to self-determination.

Now, therefore, be it resolved, that the State Council of Hawaiian Homestead Associations at Honolulu, Oahu, this 20th day of August 2000, support the passage of S. 2899, a bill to express the policy of the United States regarding the United States' relationship with native Hawaiians.

I know my time is up, Senator, and for that reason, I will close. Thank you.

[Applause.]

Senator INOUE. Thank you very much, Mr. Sang.

Is Mr. Ernest Puaoi here.

[Interruption to hearing from audience.]

Senator INOUE. Is Ernest Puaoi here? Is Stacey Crivello here? Is Lorilei Hoopai here? Is Louise Bush here?

[No response.]

Senator INOUE. If not, the hearings will stand in recess until 1 p.m. this afternoon.

[Whereupon, at 12:10 p.m., the committee recessed, to reconvene at 1 p.m., the same day.]

## AFTERNOON SESSION

Senator INOUE. The hearing will come to order.  
Our next witness is Mahealani Kamau'u.

## STATEMENT OF MAHEALANI KAMAU'U

Ms. KAMAU'U. I support the enactment of S. 2899. In light of the U.S. Supreme Court's decision in *Rice v. Cayetano*, it is essential to clear up any existing doubts that Congress has recognized kanaka maoli as among the indigenous peoples with whom it has a special relationship, and whose continuing sovereignty it acknowledges.

The threat of litigation has made it necessary to move forward with such legislation more rapidly than would be desirable in an idea world.

Much controversy exists in the kanaka maoli community as to the procedures by which a native Hawaiian governing body should be created, and as to the precise form such a body should take.

S. 2899 has been proposed in response to a clear need for expedited action. It does not mandate the form that body will eventually take, but instead leaves that to be decided by kanaka maoli.

I have three major points. The first is, S. 2988 should be amended to provide that the native Hawaiian governing body be empowered, without the need for additional legislation, to hold land in trust as a sovereign with powers of regulation and taxation equivalent to that held by other federally-recognized indigenous governments.

S. 2988 does not constrain the discretion of the Department of the Interior in approving or disapproving the form which native Hawaiians may ultimately select for the native Hawaiian governing body.

This grant of power to the Department of the Interior is a matter of considerable concern, because it could prevent the native Hawaiian governing body from ever holding lands as a sovereign; that is, with regulatory and taxation authority not subject to the power of the State of Hawaii, rather than as a mere private landowner.

The relevant language is found in section 7 of the proposed legislation. Section 7(c)(7) states that the native Hawaiian governing body shall be empowered to:

(A) exercise those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous native people of the United States.

Section 7(e)(1) states that this entity:

Shall have the same statutes under Federal law when acting in its corporate capacity as the status of Indian tribes that have been issued a charter of incorporation under the authority of section 17 of the Indian Reorganization Act;

And section 7(e)(2) states that the entity's charter may authorize it to:

Exercise the power to purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase lands and to issue an exchange of interests in corporate property.

This language does not explicitly empower the native Hawaiian governing body to hold land in its sovereign capacity with the same regulatory and taxation authority over its lands now exercised by

other federally-recognized indigenous governments; neither does it expressly preclude the exercise of such power, however.

The resolution of this question is critically important in light of the U.S. Supreme Court's decision in *State of Alaska v. Native Village of Venetie*, which held that with regard to lands held under the authority of the Alaska Native Claims Settlement Act, Alaska Natives lack such rights and are subject to the full authority of the State of Alaska in the same manner as any private landowner.

I cannot support legislation which does not allow the native Hawaiian governing body to exercise sovereign powers within the same regulatory and taxation authority over land now exercised by other federally-recognized indigenous governments.

My endorsement of the proposed legislation is given with the understanding that it does not contemplate the creation of an entity unable to exercise such powers.

To remove any uncertainty on this point, I urge that S. 2899 be amended to provide that the native Hawaiian governing body be empowered, without the need for additional legislation, to hold land in trust, and as a sovereign with powers of regulation and taxation over that land equivalent to those held by other federally-recognized indigenous governments.

Point No. 2, S. 2899 should be amended to make it clear that its provisions will not operate to extinguish kanaka maoli rights to pursue sovereignty and self-determination under international law.

Kanaka maoli never relinquished their sovereignty or rights to their national lands and resources. Their overwhelming and unanimous opposition to annexation by the United States is well-documented.

Furthermore, kanaka maoli have never had an opportunity to choose between the various forms of government as provided by international law.

Senator Akaka, Senator Inouye, counselor to the Secretary of Interior, Robert Anderson, as well as Jacqueline Agtuca, acting director, Office of Tribal Justice of the Department of Justice, have publicly stated that the proposed legislation does not and will not foreclose pursuit of other options under international law.

I ask that this bill include explicit language to make it clear to the kanaka maoli people that Federal recognition will not foreclose pursuit of other options available under international law.

Point No. 3, the process outlined in section 7 should be amended to provide for a native initiative with the least amount of interference by the Department of the Interior as possible.

Although no single kanaka maoli sovereignty initiative has yet achieved consensus, our over century-long struggle and repeated attempts to restore our government should not be dismissed.

This bill should provide funds to assist existing sovereignty groups to educate and place before kanaka maoli their respective plans for achieving self-government. I believe it is possible to accomplish this within the framework of this bill.

I support the process outlined in section 7 with the following exceptions. First, the bill does not indicate how the nine member commission which initiates the process shall be created. I propose that the nine member commission, which oversees registration and certification of an initial roll of voters, be nominated by kanaka



maoli organizations and/or individuals, and appointed by the President of the United States.

Second, I believe certification of eligibility to participate in the restoration of the self-governing entity should be by self-sworn affidavit, subject to administrative and/or court challenge.

The requirement to provide extensive genealogy documentation may be impractical or even impossible, as a matter of availability and cost. Repositories of genealogical information are already inundated beyond their capacity to respond to such requests by the public.

Furthermore, the Bureau of Vital Statistics within the State Department of Health currently charges \$10 per certified record. With each individual typically requiring many certificates to document their genealogy, this process will be extremely cost-prohibitive.

If the self-sworn affidavit, which already enjoys wide acceptance in the kanaka maoli community, is inadequate to meet requirements of the Federal recognition process, funds may be required to shore up clerical support at the Bureau of Vital Statistics, or to acquire and employ alternative technology to assist kanaka maoli with their genealogy documentation needs.

This concludes my testimony. I wish to incorporate the attached paper, a reflection of the concerns raised by kanaka maoli in community informational meetings held throughout the islands, as part of my testimony.

Thank you for this opportunity to testify.

[Prepared statement of Ms. Kamau'u appears in appendix.]

Senator INOUE. I thank you very much, Mahealani.

Now may I call on Mr. Lee Loy.

#### STATEMENT OF EMMETT LEE LOY

Mr. LEE LOY. Yes; good afternoon, Chairman Inouye, and Honorable Chairman of the U.S. House of Representatives Committee on Resources, as well as the staff of the Indian Affairs and the Resources Committees.

My name is Emmett E. Lee Loy. I am a native Hawaiian, as defined in the Hawaiian Homes Commission Act of 1920; 50 percent-plus blood quantum. I am one of 12 children born and raised on the Hawaiian homestead of Keaukaha on the island of Hawaii.

My parents are Genesis Namakaokalani Lee Loy, and my mother is Elizabeth Genevieve Luahiwa Hoopii Lee Loy, ages 81 and 77, respectively. They were one of the original 12 families to settle on the Hawaiian Homestead of Keaukaha on the island of Hawaii.

I am a graduate of the Kamehameha Schools and a graduate of the University of the University of Colorado School of Law, where I studied Federal/Indian law, advanced Federal/Indian law, advanced seminar in Federal/Indian law, as well as Federal/public land law, directly under Professor Charles F. Wilkinson, considered to the preeminent expert in the field of Federal/Indian law.

I also studied Water Law under Professor David Getches, and Constitutional Law and Federal/Maori Law, the Treaty of Waitangi of 1848, under Professor Richard Collins.

All three of these professors have won one or more cases before the Supreme Court of the United States, dealing with Federal/Indian law. It is the sole reason I sacrificed to attend the University

of Colorado School Law, the eighth ranked law school in the entire United States.

I am a former intern with the U.S. Senate Select Committee on Indian Affairs in Washington, DC; a former law clerk with the Indian Resources Section of the Lands and Natural Resources Divisions of the U.S. Department of Justice in Washington, DC; a former law clerk with the Native American Rights Fund in Boulder, CO.

I am also a former public defender for the State of Hawaii, and I am a licensed attorney to practice before the U.S. Federal District Court of Hawaii, and before the Supreme Court of the State of Hawaii.

I am now an attorney in private practice, seeking the full implementation of the Hawaiian Homes Commission Act of 1920, and the Admissions Act, Section 5(f) Land Trusts.

Now to address the concerns of those arguments raising the issue of the overthrow of the Kingdom of Hawaii, although it is a matter of public record and history, I would like to recount the effects of the Great Mahele of 1848.

Since time immemorial, all the lands of Hawaii were treated as undivided and communal property. This was recognized in the Preamble to the Constitution of the Kingdom of Hawaiian 1840.

In 1848, the lands were divided in what is today known as the infamous Mahele of 1848, under the Kingdom of Hawaii. In the Mahele of 1849, the lands were supposed to be divided in equal one-third shares between the King, the chiefs or konohikis and the native tenants, formerly known as the makaainana or commoner cast.

Instead, the King and chiefs or kuleana divided the lands between themselves, without payment or fee for such commutation or exchange. The native tenants received nothing in the Mahele of 1848.

Then the Kingdom of Hawaii sold to the native tenants, tried to sell, or pretended to sell, to the native tenants their one-third share in the Koliano Land Grant Acts of 1850 to 1854.

For reasons recounted in my written testimony that I have submitted, as well as recited in the recently released draft report from the Departments of the Interior and Justice, the native tenants only received .8 percent of their 33 percent interest in the lands. This left an undelivered balance of 32.2 percent in all of the lands in the Kingdom of Hawaii, that belonged to the native tenants.

The Kingdom of Hawaiian converted this 32.2 percent of the lands, Senator Inouye, which belonged to the native tenants and their heirs, into Government lands. In other words, from 1848 until its overthrow in 1893, for 45 years of landlessness and destitution suffered by the native tenants, the Kingdom of Hawaii made little or no effort to deliver to the native tenants their equitable property right, which the Kingdom held legal title to, as Government lands.

When the United States came into title of these lands, then known as Government lands in 1898, and which lands were formerly held by the Kingdom of Hawaii, the United States actually came into possession of the lands belonging to the native tenants and their heirs. These government lands did not belong to those

persons and heirs that had received their lands in the Mahali of 1848.

Who are the heirs of the native tenants today? The closest relatives by blood affinity are the not less than one-half native Hawaiians, still on the Hawaiian Homelands waiting lists. They are closer in blood relation to the native tenants than, for example, a 1/500th part Hawaiian.

All the laws of every single civilized nation recognize the descent of property by those closest in the degree of blood affinity. The overthrow of the Kingdom in 1893 did not extinguish the equitable property rights of the native tenants and their heirs. The heirs of the native tenants, as well as the heirs of those chiefs or konohikis that did receive lands in the Mahele, did lose their rights as subjects of an independent sovereign nation.

However, there is a distinction between the property rights belonging to the heirs of the native tenants solely, and the political rights belonging to all the subjects of the Kingdom of Hawaii.

Put another way, the lands that the United States came into possession of, do not belong to anybody with a trace of Hawaiian blood; and it certainly does not belong to the heirs of those who have received lands in the Mahele of 1848. It belongs to the heirs of the native tenants solely.

Now the U.S. Congress has already federally recognized native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920. I think the U.S. Department of Justice, Jackie Agtuca stated yesterday that the bill should be amended to include lineal descendants of the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920. In other words, Honorable Senators and Congressmen, the native Hawaiians have already been federally recognized.

The purpose of the Hawaiian Homes Commission Act of 1920 is to rehabilitate native Hawaiians, as defined in the Hawaiian Home Commissions Act of 1920. Rehabilitation has already been determined by the Supreme Court of both the United States and the State of Hawaii to mean self-determination.

That is to say that the purpose of the Hawaiian Homes Commission Act of 1920 is self-determination for native Hawaiians, recognized under the Hawaiian Homes Commission Act of 1920.

As currently drafted with no minimal blood quantum definition of native Hawaiians, found in section 2(a), the bill S. 2899 treats the native Hawaiians differently from all the other tribes in the United States, because S. 2899 defines native Hawaiians as anybody with any amount of Hawaiian blood, to come in and redefine a native Hawaiian to be federally recognized under subsection 2, subsection 6 of this bill.

As such, the bill, S. 2899, is a denial of the equal protection of the laws of the United States, because Congress would never do that with any other Indian tribe, with a no minimal blood quantum definition.

For example, would Congress allow any person with any amount of Navajo blood to participate in a scheme such as S. 2899 proposes; and would Congress allow a person with 1/500th 12th part Navajo blood to vote to kick out the not less than one-half Navajos off of their reservation; of course not.

If a tribe were to discover oil on its reservation in Oklahoma, would the Congressman from Oklahoma seek to introduce and then try to pass a law that which invites any person with any amount of that Indian tribe's blood to vote to kick the Indian tribe off of their reservation, and to steal that Indian tribe's oil; of course not.

This is what this bill is about, with regards to the no minimal blood quantum definition of a native Hawaiian. It is an attempt to circumvent the blood quantum requirements of the Hawaiian Homes Commission Act of 1927.

There are fundamental and conceptual errors contained in this bill that would be too numerous to recount, without exceeding my 5 minute time limit, but I will start.

Native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920, have defended the blood quantum requirements, ever since the enactment back in 1920, for the last 80 years, and ever since Hawaii became a State in 1959, for the last 41 years. By such a rigorous defense, we have adopted the definition by estoppel through such vigorous defense.

Congress has not lowered the blood quantum under the Hawaiian Homes Commission Act of 1920, because we have continuously asked Congress not to lower the blood quantum. If you are going to have a rule of native Hawaiians, it should start with the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920.

State of Hawaii officials have not carried out the provisions of the Hawaiian Homes Commission Act of 1920, Senator and Honorable Congressmen not present here today, because they do not want to fulfill their obligations; obligations that they undertook as a condition to being admitted into the sacred and insoluble union of the United States, in section 4 and section 5(f) of the Admissions Act.

One of the ways the State of Hawaii officials have to defeat the purpose of the Hawaiian Homes Commission Act of 1920 of self-determination being exercised by native Hawaiians is to broaden the definition of a no minimal blood quantum so much that the State is allowed to shirk its responsibilities to the higher blood quantum native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920.

Right now, more than 30,000 qualified beneficiaries are waiting for their leases. Now the Department of Hawaiian Homelands will say, that is approximate. They cannot tell you exactly. But they will say that is approximately 19,000 native Hawaiians.

But Honorable Congressmen and Senators, this is an undercount. It is a deliberate effort by the State to under-represent the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920. By under-counting the native Hawaiians, they want to under-represent our interests.

That is the problem that we have run into with the Office of Hawaiian Affairs, like the Supreme Court pointed out. Before I would get to that, I would say that the *Rice* decision, Honorable Congressmen, Congresswomen, and Senators, is not fatal to the Hawaiian Homes Commission Act of 1920.

If you take a look at the language in the majority opinion, as well as the concurring opinion, they point out that the defects have

to do with the State of Hawaii attempting to broaden the definition of a native Hawaiian.

For example, Justice Kennedy, writing for the majority, states at page 18 of the opinion, that the very object of the statutory definition in question, of its earlier counterpart in the Hawaiian Homes Commission Act of 1920, is to treat the early Hawaiians as a distinct people, commanding their own recognition and respect.

The State, he says, the State in enacting the legislation before us, has used ancestry as a racial definition and for a racial purpose. He does not say that Congress has used ancestry for a racial definition and for a racial purpose.

The distinction is that the Hawaiian Homes Commission Act of 1920 was enacted by Congress. Congress moves in the field of the national interests. Moreover, the distinction is that the HHCA was not enacted for a racial purpose.

Congress enacted the Hawaiian Homes Commission Act of 1920 for a compelling governmental interest of rehabilitation of native Hawaiians. Rehabilitation means self-determination. The HHCA of 1920 is necessary and narrowly tailored to achieve this compelling governmental interest; and, as such, it will withstand Constitutional scrutiny. When Congress moves, it moves in the national interest.

I know I have taken more than 5 minutes. So I just wanted to thank the Honorable Senator.

The Supreme Court also articulated this rejection of the State's argument with regards to its no minimal blood quantum definition in the *Rice* case. But the Office of Hawaiian Affairs has engaged in a campaign blitz, using section 5(f) revenues, that are supposed to be used to benefit native Hawaiians.

Instead, the Office of Hawaiian Affairs has turned its back on the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920. They are not helping out the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920.

They are not helping out the people that are still dying on the Hawaiian Homes waiting list. Many native Hawaiians have died on the waiting list. The State of Hawaii has not done anything about it. What do they come up with, the Office of Hawaiian Affairs, where people who do not qualify under the act are controlling our resources, at section 5(f).

They are hoarding our money in the amount of \$340 million that they do not want to expend on the beneficiaries still, the 50 percent plus, the real deal, native Hawaiians, who are not being settled onto the Hawaiian Home lands, and are not being accorded what Congress set aside for them in rehabilitation and self-determination.

This is what they are trying to do with this bill. This is a scam. It is an attempt to play the United States as a bunch of fools. You see, the State of Hawaii agreed to carryout the Hawaiian Homes Commission Act of 1920. The United States, after giving them 1.4 million acres, and after the State promised that it would carryout the Hawaiian Homes Commission Act of 1920, the State has done neither.

Now they want to come to the Federal Government and ask them for more moneys and more moneys. If you give it to the State, it is not going to get to the native Hawaiians.

Look at their record, for the last 41 years, the State of Hawaii. They have a lot of people that cater to the State of Hawaii's interests, because they get their funds from the State of Hawaii. They get their funds from the Office of Hawaiian Affairs.

The Supreme Court pointed out the differential in the alignment of interests between the native Hawaiians and OHA's electorate in rejecting the State's argument, in part 3 of their opinion. The Supreme Court found that there was a differential in the alignment of interest between the native Hawaiians, as defined in the Hawaiian Homes Commission Act of 1920, and OHA's electorate, in striking it down.

Then this is what Justice Breyer says, you know, native Hawaiians out there, do not lose faith in the Supreme Court of the United States. What OHA is telling you is not true. This is what the Supreme Court says, Justice Breyer. Native Hawaiians, considered as a group, may be analogous to tribes of other Native Americans.

Of course we are analogous, because under the Indian Reorganization Act of 1934, it also recognizes Indians who are over one-half Indian blood.

But the statute does not limit the electorate to native Hawaiians; rather, it adds to approximately 80,000 native Hawaiians, about 130,000 additional Hawaiians, defined as including anyone with one ancestor, who lived in Hawaii, prior to 1778; thereby including individuals who are less than 1/500th original Hawaiian, assuming nine generations between 1778 and the present.

Anyway, I just want to wrap up, because I know there are other people to speak. I appreciate you coming to Hawaii, but I want you to know that the State of Hawaii is engaged in this scam, because they want to get more Federal moneys from the Federal Government.

They have been selling us this story about, the United States stole your lands. The lands are still in the Hawaiian Islands. It is the State of Hawaii who has those lands. They do not want to carryout the Hawaiian Homes Commission Act of 1920, Honorable Senator Inouye and Congresswoman Patsy Mink, and everybody else who is not here at this time.

You know, all we have got to do is carryout the Hawaiian Homes Commission Act of 1920, use the section 5(f) revenues to fuel that, and put a stop to the State not carrying out the provisions.

Senator there are people dying on the waiting list. They are still dying. They need to be on that land rehabilitating, whether it is under the Kingdom of Hawaii or the United States. That land belongs to the heirs of the native tenants. Related closer by blood affinity are those 50 percent-plus blood quantum.

So I would ask that you accept my testimony. I appreciate you hearing me out.

[Applause.]

[Prepared statement of Mr. Lee Loy appears in appendix.]

Senator INOUE. I thank you very much, Mr. Lee Loy.

Now may I recognize Mike Gibson.

## STATEMENT OF MICHAEL W. GIBSON

Mr. GIBSON. Thank you, Senator Inouye and Representative Mink.

My name is Michael Gibson. My family arrived in Hawaii in 1842. Since then, eight generations of my family have lived here. They were not missionaries or large landowners. They have been teachers, librarians, farmers, policemen, priests, doctors, social workers, and lawyers. They have always been responsible, caring, and proud to be Hawaiians. Many are part-Hawaiians, and some, like myself, are not.

My grandfather was born in 1889 in Waimea, Kauai. His mother was born in the 1850's in Honolulu. My grandfather's family came from England and Canada.

My grandmother was born in 1895 in Papaikou, on the Big Island. Her family was from Germany. My grandparents and their ancestors were citizens of the Kingdom of Hawaii, and later the Republic Territory and State of Hawaii.

My other grandparents were from Scotland. None of my ancestors were Americans, except by virtue of being born in Hawaii, or having become citizens at the time of annexation.

I would like to briefly read to you from a 1971 watumull oral history project, where they interviewed several elderly citizens of the State at that time. Copies of these interviews are available at the Archives of Hawaii and the Hamilton Library. This is an interview of my grandfather.

The interviewer asked:

Could you please recall your childhood?

My grandfather states:

Of course, one of the things that still sticks out in my mind is annexation. At the Ceremonies of Annexation, we sat right on the palace steps and, of course, everybody went there.

I can remember very distinctly, very clearly, when they hauled down the American flag, and the American band played, Hawaii Ponoī, the national anthem. Then after that, they played, Aloha Oe.

Then in parentheses it says, "speaks with emotion."

I can remember sitting next to my mother. I looked up at her, and I knew she was crying. I wondered why she was crying. She really cried. All of a sudden, the Hawaiian flag came down.

Under the laws of the Kingdom of Hawaii, everybody born in Hawaiian was a citizen of the Kingdom. In 1846, the laws of the Kingdom specifically stated that all persons born in Hawaii, irrespective of race or ancestry, would be considered "native subjects."

The case of *Naone v. Thurston*, 1 Hawaii, 200 in 1856, held that persons born in Hawaii of foreign parents were Hawaii subjects. In 1893, when the Kingdom of Hawaii was overthrown, there were Chinese, Japanese, and Caucasians, in addition to the native Hawaiians, who were also citizens of the Kingdom of Hawaiian. In fact, in 1893, approximately 60 percent of the citizens of the Kingdom were not native Hawaiians.

My concern with the bill is that it is based upon the incorrect factual premises that only native Hawaiians were citizens of the Kingdom and, therefore, the only persons entitled to reparations and restitution for acknowledged wrongs.

Specifically, the Akaka bill, in its reference to the Apology Resolution, states that the United States acknowledged the ramifica-

tions of the overthrow of the Kingdom of Hawaii, and supported reconciliations between the United States and native Hawaiians. The Apology Resolution and the Akaka bill neglect to mention the majority of nonnative citizens of the Kingdom.

In defining native Hawaiians, the Akaka bill limits native Hawaiians to those who resided in Hawaii on January 1, 1893, days before the overthrow of the Kingdom. Not only does that definition eliminate the non-native citizens of the Kingdom, but it eliminates native Hawaiians who were not living in Hawaii on January 1, 1893.

I would like to emphasize that I am not opposed to Federal funding of Hawaiian programs to improve the conditions of needy Hawaiians, or to continue the tax exempt status of the Alii Trusts, or the other nonprofit organizations benefitting needy Hawaiians. I am not opposed to self-government of native Hawaiians, if that is their choice.

I am opposed to ignoring the descendants of nearly half of the citizens of the Kingdom of Hawaii, if any basis for a program or privilege is the overthrow of the Kingdom of Hawaii.

All of the descendants of the citizens of the Kingdom of Hawaii should be treated equally, irrespective of race, when it comes to reparations and restitutions for the allegedly wrongful conduct of the United States.

The United States should not attempt to circumvent its legal responsibilities for restitution to only a single racial group, ignoring the majority of the others equally affected by its actions.

Similarly, I do not see that the United States can negotiate with the State of Hawaii regarding the transfer of land, resources, and assets to the native Hawaiian governing body. All of the descendants of the citizens of the Kingdom of Hawaii, whether Hawaiians or non-Hawaiians, should have similar right to the lands, resources, and assets restored to them.

Transferring assets now held by the State of Hawaii that are held for the entire public may benefit native Hawaiians, but it will harm the rest of the residents including, in particular, the descendants of the non-Hawaiian citizens of the Kingdom.

Thank you, Senator Inouye, and thank you, Representative Mink.

[Applause.]

[Prepared statement of Mr. Gibson appears in appendix.]

Senator INOUE. I thank you very much, Mr. Gibson.

Now may I call upon Mr. Robert Booth.

#### STATEMENT OF ROBERT BOOTH

Mr. BOOTH. Thank you very much for allowing me to address you this afternoon. I would say anybody's hearts who were not broken by these three testimonies needs to have a heart transplant. Every one of them was outstanding.

With only 5 minutes to speak, I feel rather like a truck driver of a 5 ton truck, with 10 tons of canaries, who has to get out every now and then and beat the side of the truck to keep the canaries flying, because he knows that if the canaries stop flying, the truck will stop moving. So I am going to speak kind of fast, and I hope that your ears will be able to keep up.



My name is Robert Booth. I am not here representing anyone necessarily, and I do not have a bunch of initials after my name. I do not even have a tincture of blood quantum. I know only a tiny smattering of the Hawaiian language, which basically means that I know that "mahalo" does not mean the trash bin.

I am just your average white guy from the Mainland. I have lived here for only 16 years though, and as much as any place and more than many places I have lived, Hawaii is my home, too.

Moreover, about 11½ years ago, my daughter was born here in Queen's Hospital. I imagine she will be here all her life, and even if not all her life, I will always encourage her to consider Hawaii her home.

Her mother was born here 40 some years ago in St. Francis hospital. Her parents, my daughter's maternal grandparents, were born on Maui about 80 years or so ago. Their parents came from China and Okinawa about 100 years ago, I am told.

That being said, I would posit to you before me and to everyone seated around me that even I, just your average white guy from the Mainland, have a vested interest in the decisions you are considering about this, our Hawaii'i nei.

I think the decision you are contemplating, creating a sovereign Hawaiian homeland here in Hawaii is much like, I guess, the tribal lands certain Native American Indians enjoy on the Mainland. It is all about doing the right thing.

I hope we can all agree that you are here because you want to do the right thing, and we are all here to ask you to do the right thing. Thus, the question is, what is the right thing? That is the question I would like to address this afternoon, in the probably 3 minutes that I have left.

I put it to you, ladies and gentlemen, that the right thing is for you to find a way to give back this nation in its entirety to the Hawaiian people. We do not have to discuss whether the overthrow 100 and some years ago was illegal or not illegal. We do not have to consider whether that plebiscite thing 100 years or so ago was in any way binding.

We do not have to consider whether President so-and-so never intended for the marine occupation of Honolulu and the imprisonment of the Queen to be permanent. Right now, right here, we can decide simply this, "let us do the right thing." Let us not quibble. Let us not waiver. Let us not hem and haw. Let us just do it.

Why is giving this nation back the right thing? That is a fair question. Many would say it is not the right thing; it is only a right thing, among many options.

I put it to you that it is the right thing. First, I put it to you that it is more right than what you are contemplating: Erecting a nation within a nation. Native American nations exist all over the Mainland United States. Has any real good come of those nations within a nation?

I would posit that no good has come, unless you call good the continuation and the augmentation of racist sentiment on both sides of those borders. No good has come unless you call good the proliferation of legalized gambling and the evils that accompany it.

A rather wise man, about 2,000 years ago said, "A nation divided against itself cannot stand." I put it to you that erecting a nation

within a nation is not far different from dividing a nation against itself.

Moreover, erecting a nation within a nation is only a half-right thing. The State motto is, "The life of the land is perpetuated in righteousness."

Righteousness, folks, does not allow half measures. The wisdom we learned as children may be helpful. We all were told, I am sure, that two wrongs do not make a right. I think we can add, two half-rights do not make a whole right, and neither will one half-right.

Finally, there is this thing called amends. In the 12 steps of the Alcoholics Anonymous, it is found in steps eight and nine. We make a list of all that we have harmed, and then we make amends to them.

Fundamentally, amends means we make change. Fundamentally, it means we stop the damaging behavior. But implicit in the idea of amends is the idea of restitution. That means that when we find we are in possession of something that does not belong to us, we give it back.

We do not have to worry about whether we came by it legally or illegally. It simply means if something is not ours, we do not keep it. I posit to you that these Hawaiian Islands, this Hawaiian nei, is not yours and you should give it back.

[Applause.]

[Prepared statement of Mr. Booth appears in appendix.]

Senator INOUE. I thank you very much, sir.

Now may I call upon Jay Jay Kapele and Kehaulani Filimoe'atau. Is Mr. Kapele here? Is Ms. Filimoe'atau here?

I am happy to recognize Kehaulani Filimoe'atau.

#### STATEMENT OF KEHAULANI FILIMOE'ATU

Ms. FILIMOE'ATU. Aloha and mahalo for allowing me the opportunity to walk in here today. My name Kehaulani Filimoe'atau. I am from the island of Maui.

Like others on Maui, I received a message on my answering machine late Friday afternoon, advising me that the Akaka hearing scheduled for Maui was not going to happen.

You know, I almost felt betrayed. Then I got mad, because I had been invited to Honolulu, which meant that now this hearing was asking me to pay to be heard. If I did not want to do that, then I could speak to a machine.

To me, to give oral testimony was to be a warm exchange of words, a meeting of eyes, and being able to really see and feel one's presence.

I knew that flying to Oahu on Friday was not going to be a possibility for me, as I am a working mother, and had asked to be given the consideration of being an afternoon speaker on Friday at our Maui Community College.

But you know, akua has a way of taking care of us. For you see, I just came from a previously scheduled meeting at the Kawaihāo area, and knowing that you all were here, I decided to take the chance of just showing up and hoping to be able to share manao.

So then you need to know that your change of revenue effectively caught Maui off kilter, especially on Friday so late; especially with only the weekend to try to see how you could be here within 1

week, when all along, for the past weeks, we have been making allowances and time changes so we could be there for the hearing that was to be on Maui.

So excuse me, I have nothing in writing. You have caught me off guard, and bear with me today; again, aloha and mahalo.

My name is Kehaulani Lumho Filimoe'atu. I was born and raised on Maui, and except for the years spent traveling abroad and going to school on Oahu, I have spent all of my life on Maui.

I come from the Kauaia Clan, whose roots go deep into our Hoonuaua Ahapua'a, so Kahikinui can also be considered my kulahiwi. I am a native Hawaiian, by American definition, being 75 percent Hawaiian blooded. I am not a Native American.

I sit on a list which entitles me to a land award from the Department of Hawaiian Home lands. But I just deferred an award, because they just could not award the aina, but they had to attach a very expensive house with it.

Because I already had a house, and I could not afford the expensive house that they wanted me to choose, I deferred. Having to pay for two expensive houses was beyond my affordability. So I am still waiting, like many of our other people.

Long ago, I told myself that I was not going to marry a Hawaiian, and I did not. So now I have three children who do not fit the American definition of a native Hawaiian, because they have less than 50 percent koko. They are not Native Americans, either.

Not too long ago, the United States apologized for being rude to my Queen in 1893. I was glad they finally owned up to that illegal overthrow, but I felt frustrated, because I had heard the apology made to me in 1993, but owed to my kupuna of long ago.

Then there were those reconciliation hearings, that got a lot of coverage throughout the State of Hawaii. We heard many Hawaiians asking for lands, asking for moneys, for better entitlements, for more laws, and even better recognition.

When it was all done and over, we were told that these two messengers, sent by Uncle Sam, would go back to Washington, DC, create a report, and share this report with us, back in Hawaii. Well, as of last Thursday, I was still waiting, but it came. You see how things happen so fast for us.

Now we have our own U.S. Congressional Delegation, who are counselling their constituents that now is the time for action toward recognition. There is a process that was chosen by a Hawaiian electorate, open worldwide, for self-determining what we, as a people, would like to see as a governing document to take care of ourselves.

This process is one that has brought together a wide range of Hawaiians, from all social economic levels of all corners of the Hawaiian communities, both within and without our Hawaiian Archipelago.

The delegates to the 'Aha Hawaii 'Oini work under no restriction but to serve the Hawaiian people. The time spent in gatherings in the last year have been paid by each delegate, with some funding from the Department of Hawaiian Homelands, and none from the Office of Hawaiian Affairs. These delegates have a very deep kuleana and have vowed to persevere toward a better life for our kanaka maoli.

I serve as a member of Aho. It has been tedious. It has been tenuous. It has been taxing on our time and our small pockets. With 70 of us, we do not purport to talk alike, think alike, or look alike.

But that, for a Hawaiian, never means we cannot aloha each other. For Hawaiians, this has been an ongoing process of working amongst ourselves, both within Aho and without, to better ourselves.

The Hawaiians have started a process to restore a government of the millennium. Not all Hawaiians have come to the same exact governmental document agreement; but choosing for oneself means time for exploring all options available.

Now I gather the people in Washington, DC think we are taking too much time. Although kalahui has been asking for a nation within a nation for the past decade, we now have a bill that hopefully will get it done within 10 weeks.

I am not so sure I want another non-Hawaiian telling me if I am Hawaiian or not. I am not so sure I want another layer of the United States of America bureaucracy to assist me in getting recognized. I am not so sure that being recognized by the United States of America is worth giving up my freedom to strive for independence. I do not want to play "United States, may I."

Hawaiians take care of Ohana, whether they need to or not. Hawaiians have always been inclusive, sometimes to a fault; but nevertheless, embracing.

To tell a Hawaiian that he can only be recognized if he is on a roll negates who he is, who he was, and who he will be. The kauna of a Hawaiian is more than a mere line on a list, a part of a roll, a finite number to be counted.

Who will tell the future generations that this was the only way towards a better future? Who will tell the future generations that we could not think for ourselves, so we decided to let the U.S. Congress do it for us? It will not be me.

We accepted a United States' apology without United States restitution or United States reparations. We can accept the United States' recognition without United States restrictions and United States requirements.

I am truly sorry you will not be able to sit on Maui this Friday, as you will miss our kupuna who are anxious to share their passion olelo with you. They too are too frail to make the costly trek here.

Mahalo for your time.

[Applause.]

[Prepared statement of Ms. Filimoe'atu appears in appendix.]

Senator INOUE. Thank you very much, Ms. Filimoe'atau.

Now may I call upon the Honorable Sol Kaho'alahala, a member of the House of Representative. Welcome to the committee, sir.

**STATEMENT OF HON. SOL KAHO'OHALAHALA, HAWAII STATE REPRESENTATIVE, REPRESENTING THE ISLAND OF LANAI**

Mr. KAHO'OHALAHALA. Aloha, Senator Inouye and members of the Committee on Indian Affairs and the House Committee on Resources. My name is Sol Kaho'ohalahala. I am the Hawaii State Representative for the 7th District, which is made up of West Maui, the island of Kaho-olawe, Lana'i, and Moloka'i, including the District of Kalawao, more familiar to us as Kalaupapa.

I was born and raised on the island of Lana'i, and I would like to speak in support of S. 2899, and H.R. 4904. I believe that it is a necessary step for native Hawaiians.

In my capacity as State Representative, I am highly aware of the challenges our people face, and many times, the inability of the State government to effect a positive resolution to those challenges.

While there are a number of explanations for the inability to resolve Hawaiian issues, ranging from the lack of information to a direct conflict of interest with the State's own financial interests, I believe that my colleagues in the legislature want to assist native Hawaiians in achieving better solutions to their issues.

During Hawaii's 2000 legislative session, House Concurrent Resolution 41 entitled, "Supporting Federal Recognition of a native Hawaiian Nation" was sponsored and passed with unanimous support in the House, and near unanimous support in the Senate.

This resolution, like the creation of the office of Hawaiian Affairs over 20 years ago, is a testament to the fact that the people of Hawaii do support autonomy for its indigenous native Hawaiians.

The State of Hawaii is not the best vehicle for self-governance for native Hawaiian people. Even in carrying out its best policies, the state cannot produce the kinds of solutions for Hawaiian issues that the Hawaiian community can produce.

As the breaches of the Hawaiian Homes Commission Trust illustrate, the State has not always proved to implement the best policies. It is difficult for native Hawaiians to participate in and advocate through the state government, because it uses culturally foreign processes of decisionmaking and conflict resolution.

We need a governing structure of our own; one that can make decisions in a culturally appropriate way, and can represent our people's concerns and ideas to local, Federal, and State, governments.

There are an endless number of issues brought to the State legislature, which directly impact native Hawaiians' daily lives. Hawaiian Homelands policy, water rights, preservation of sacred sites, and zoning and development policies are all brought to the legislature for direction. Each of these issues directly impacts the native Hawaiians' ability to preserve, protect, and transmit our culture, language, and traditional knowledge to future generations.

A body that is not directly and solely accountable to the native Hawaiian people decides each of these issues. The State and its agencies are simply the wrong tool to resolve many native Hawaiian issues.

Because there is no recognized native Hawaiian government, however, the legislature is forced to try to deal with the issues. It creates a situation that is frustrating for both our people and the legislature in both houses.

It is important that this bill and any additional efforts toward reconciliation represent a true recognition of authority of native Hawaiians to govern themselves and their land base. Without territorial jurisdiction, there is no safety zone for the uninterrupted revitalization of our language, culture, and traditional practices.

There is only one other comment that I would like to make. That is the inability to testify on this bill for those people who had not originally signed up, or signed up prior, to testify. I am speaking more on behalf of the people of Lanai.

Sometimes we engage ourselves into a process that does not seem to be culturally appropriate. In this case, when we are asking our people to sign up in a process that requires them to submit written testimony and sign up in advance, our people are cultural and oral people. Oftentimes, much of their testimonies are given when their na'au starts to cause them to speak.

So I would say, in these cases, although we are not going to be on the island of Lanai at all today, we still would like to participate, and we expect that we will send you written testimony.

In light of the way that the processes were set up, we were quite concerned about that; that there were no Lanai testifiers signed prior. That is why I raise this particular issue. Lanai perhaps would not have been the kind of place where that might have been required to do so.

Nonetheless, I am here to bring representation, not only for my island, but for myself, personally, to support these bills. I worked hard in the last session of the legislature to bring consensus amongst those legislators in supporting this resolution for Federal recognition.

I believe it is the next step, as I said earlier. Because of that, we will have to work out, as Hawaiian people, what all of the intricacies of this will be. But we surely must be involved at taking another step forward. Therefore, I support this.

Thank you.

[Applause.]

[Prepared statement of Mr. Kaho'ohalahala appears in appendix]  
 Senator INOUE. Thank you very much, Representative Kaho'ohalahala. Your profound statement will be studied very carefully. Thank you very much.

Mr. KAHO'OHALAHALA. Thank you.

Senator INOUE. With that, the hearing will recess until 8:30 tomorrow morning.

[Whereupon, at 2:45 p.m., the committee was recessed, to reconvene at 8:30 a.m., August 30, 2000 at Honolulu, Oahu, HI.]

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## APPENDIX

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### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. MICHAEL P. KAHIKINA, HAWAII STATE  
REPRESENTATIVE

Aloha Kakou:

I'm State Representative Michael P. Kahikina testifying today in support of the intent of S. 2899/H.R. 4909. The purpose of this legislation is to clarify the political relationship between Native Hawaiians and the United States. The legislation does not establish a new political relationship—the political relationship already exists through the Hawaiian Homes Commission Act, as amended 1921.

I stand here testifying today as a beneficiary of the HHCA. I am a third generation native Hawaiian on the 'Aina Ho'opulapula 'O Nanakuli. A keiki oka 'aina [children of the land]. The only elected native Hawaiian serving in the State legislature born, raised, and still living on Hawaiian Homestead land in Nanakuli. I moved back to Nanakuli after my mother passed away in 1990, with less than 40 years left on the lease.

In 1997, I applied for my own Hawaiian Homestead lease to find out years later that my application was not processed properly and I was passed up many times from receiving an award. In 1991 State Legislature enacted chapter 674, HRS as part of an overall plan to address breach of trust claims against the State involving the Hawaiian Home Lands Trust. The Hawaiian Home Lands Trust Individual Claims Review Panel ["Panel"] was established. Its purpose to receive and review claims of individual native Hawaiian beneficiaries for actual damages resulting from an act or omission by an employee of the State in the management and disposition of Hawaiian Home Lands trust resources for the period August 21, 1959, to June 30, 1988.

In 1997, the Panel submitted its first report to the legislature with recommended damage awards. The Panel also sought an extension of the time period in which to review claims. Act 382, passed by the 1997 Legislature, extended the Panel's time period to review claims by 2 years, mandating a final report to the 1999 Legislature, prescribed a formula and criteria to qualify and resolve all claims and required the Panel to apply the working group's recommended formula once it was approved by the Governor.

The Governor approved the working group recommended formula and criteria on December 30, 1997. The working group's recommendations eliminated almost 60 percent of the active claims in the claims process and significantly changed the Panel's formula for calculating actual damages. Consequently, a group of claimants challenged the constitutionality of act 382 in State Circuit Court. The Panel believed that act 382 was seriously flawed and determined that it would not implement the working group's recommendations until a court reviewed the constitutionality of act 382.

In July 1998, a Circuit Court Judge issued an order determining that certain provisions of act 382 were unconstitutional and deprived claimants of due process of the law. The Court added that the composition of the working group undermined the appearance of a fair disposition of claimants' claims. In an order issued Decem-

ber 30, 1998, the Court further explicated its earlier decision and ruled on all issues raised by the parties. The Court reiterated its earlier determinations and also found, among other things, that act 382 improperly delegated legislative authority to the working group by empowering the working group to conclusively interpret the language of chapter 674, HRS, and define the standard for compensation. The Court permanently enjoined the Panel from applying the working group's formula and criteria in the process.

The way it was handled caused many native Hawaiians to be suspicious and critical. The Federal and the State government do not have a good track record in protecting the rights of native Hawaiians. I, like you, when I was sworn in to do my duty as an elected State Representative, sworn to uphold and defend the Constitution of the United States of America and the Constitution of the State of Hawaii. The beneficiaries of the native Hawaiians that is protected in the Constitution of Hawaii is defined and authorized through the Hawaiian Homes Commission Act, enacted by Congress, 1920. The beneficiaries request your committee to exercise your fiduciary responsibility [already set forth in the HHCA] and assist the Individual Claimants in receiving payments consistent to Individual Claims Panel. Their claims is no different from the native Indians, the Jewish people and the Japanese Americans that were placed in internment camps after the bombing of Pearl Harbor. Those Japanese Americans interned already got their reparations, native Hawaiians are almost likened to still living in the internment camp, third class citizens not able to even elect those commissioners that makes policies that effects ours [mine] every day life. I supported the idea to pay the Individual Claims through Office of Hawaiian Affairs because they receive their revenues established in the State Constitution in behalf of the native Hawaiians as defined in the HHCA.

The 7,000 families now living on Hawaiian Homestead and the 20,000 plus applicants on the waiting list are concern about the threat on Hawaiian Homestead if this bill does not meet its goals. Fourteen years ago, Nanakuli Hawaiian Homestead Community Association formed the State Council of Hawaiian Homestead Association [SCHHA], bringing together majority of the Hawaiian Homestead Association's statewide. Supported by the Department of Hawaiian Home Lands, the SCHHA, at it's 14th Annual Conference held August 18, 19, 20, 2000 at the Airport Plaza reviewed, discussed and voted unanimously to support the intent of S. 2899/H.R. 4904. SCHHA's hopes are to protect the current programs and services for Native Hawaiians, including the Hawaiian Home Lands, the Native Hawaiian Education Act, and the Native Hawaiian Health Care Improvement Act.

I share the concerns of the beneficiaries who live on the 'Aina Ho'opulapula, they want to take action if serious threats are made to the Hawaiian Homestead. I pray not another "Wounded Knee". I fear the anger and violence in voices of the people. They even called me a "sell out" because I support this bill. I support protecting any and all benefits for native Hawaiians. And I believe that this is the spirit that is carried within the intentions of S. 2899/H.R. 4904. There is no perfect government on this Earth, and with all of its weaknesses, "God bless America". As a veteran of the United States Air Force serving my country during the Viet Nam era [1968-72] as an aircraft electrician on KC-135's and B-52's and having been spat on by an American protester at San Francisco Airport in 1971, I have a deep desire to seek justice within the frame of the laws in place now. I render unto America like Paul writes in the Bible to render unto Caesar what is Caesar and render unto God what is God's.

I have reservations with the section in the bill that creates a process to organize native Hawaiians without proper input and participation from the native Hawaiian community. The HHCA qualified a native Hawaiian by a process that proved your ancestors lived here prior to 1778. The bill expands the beneficial class to those descendants proving their ancestors lived here on January 1, 1893, when Queen Liliuokalani was overthrown. I believe that the "blood quantum" rule in the HHCA is the invisible division that divides the native Hawaiian people. But more land and resources are needed to address all the needs of the native Hawaiian people.

The bill also places the office within the Department of the Interior within the Office of the Secretary of the Interior. It also request additional involvement from the Department of Justice, and authorize the Attorney General to designate an official to work with the Department of the Interior in implementing, enforcing, and protecting the rights of Native Hawaiians in their political and legal relationship with the United States. Can they now step in and protect the rights of native Hawaiians as defined in the HHCA? I hope that Congress appropriates the funds needed to carryout all of the mandates to protect the rights of native Hawaiians in seeking political status.

In conclusion, I support the intent of S. 2899/H.R. 4904, creating a process that provides the Native Hawaiian community with the flexibility to develop the entity



for a government-to-government relationship with the United States, while providing parameters within the framework of Federal law. May we accomplish our goals in protecting the current programs for Native Hawaiians and assure a process that encourages many Native Hawaiians to participate in the process that will determine the future of not only native Hawaiians, but for all people of Hawaii, America, and the world. I thank you from the bottom of my heart for allowing me to share my testimony supporting S. 2899. May God bless you all as we continue in this great debate.

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PREPARED STATEMENT OF CLARA L. KAKALIA

Aloha Senator Akaka:

To have legislation or not to have legislation, this is the question the Hawaiian people must decide.

This is the first event a bill has been introduced for Federal recognition in our behalf in Congress.

My Ohana and I are supporting this bill.

Mahalo Senator Akaka, Senator Inouye, and Representative Abercrombie.

The definition on "Native Hawaiian". The Hawaiian community should create and determine the definition of Native Hawaiian. Likewise, the blood quantum, it should be resolved by the Native Hawaiian community.

A process in developing a roll call is inevitable so that a Native Hawaiian Interior Governing Council can be created. This Council would establish a Native Hawaiian governing body.

It is within this Hawaiian governing body, a constitution and bylaws will be drafted.

The rights and powers are vested in the Native Hawaiian Governing Body:

No. 1, exercise those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the aboriginal, indigenous, native people of the United States;

No. 2, prevent the sale, disposition, lease or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian Governing Body without the consent of the Native Hawaiian Governing Body;

No. 3, determine the membership of the Native Hawaiian Governing Body; and

No. 4, negotiate with the Federal, State, and local governments.

It is within this perimeter, Federal recognition upon approval by the Secretary of the Interior shall be recognized.

**WE STRONGLY URGE THE PASSAGE OF THIS BILL.**

August 21, 2000

To: All Parties involved in Native Hawaiian Affairs:  
Federal Levels: Senator Dan Kahikina Akaka  
Senator Dan Inouye

State of Hawaii Office of Hawaiian Affairs  
State of Hawaiian Department of Hawaiian Homes Lands commissioners  
State of Hawaii Governor Cayetano

Aloha Kakou,

My name is Iwalani Arakaki, of Kalamaula, Molokai, Lot 13A. I am concerned of the following issues:

- (1). Update on Hawaiian Home Lands Trust individual claims.
- (2) Claimants/Plaintiff are properly before court and have a right to sue the state.
- (3). I am one of the person who is in the class action lawsuit.
- (4) On June 9, 2000 Judge Marks granted class certification to the claimants. (letter attached).
- (5) We are on our way to a long process, this is only the first part of the case.

My Mahalo

The State of Hawaii and its Governor Cayetano has taken away our civil rights away from my ancestors, my children and grandchildren and unborn generation and myself.

As lineal descendant of the indigenous native people who are the original inhabitants in the Hawaiian Archipelago also know as State of Hawaii, It is my duty to reserve our inherent right to my ancestors and my unborn generation.

Even before the illegal overthrow of January 01, 1893, my ancestors occupied and exercised SOVERINGTY in the Hawaiian Archipelago, including the area that now constitutes the state of Hawaii, as evidence by - but not limited to genealogical records.

I come of the Pihenui, *1. Pihenui, Kawenaole, Kamakama'noa'noa'* Unea, line through my mother, *Pihenui*.

Through my father: Ma'a, Kawenaole, Kaluahine, Kamakama'noa'noa'  
Manoano, KauWe-o-mahi, Kauaua-a-mahi.

My exhibits will include certified documents as verified facts:

Affidavits, church baptismal, birth records, death records, census, court records and kumu ohana sheets with Hawaiian Homes Lands.

And documents of different genealogical books:

1. Hawaiian Royal & Noble genealogical, "Oukah", published by Triskelion Press P.O. Box 190313, Dallas Texas 75219, copyright 1998. Approved by the Society of American Royalty, Dallas TX 75219  
Dedication to Princess Myrtle Kaloioikalani Kinau Wilcox of Hawaii, January 4, 1924, died June 4, 1998.

In summary, I absolutely object S.2899.

Respectfully Submitted,

*Iwalani Arakaki*

Iwalani Arakaki

P.O. Box 143

Kaunakakai, HI 96743

Ph. (808) 553-3559

# Certificate of Baptism



ST. ANTHONY CHURCH  
1627 Mill Street  
Wailuku, Maui, Hawaii 96793

\* This is to Certify \*

That Maria Ka Malu Nuuhiwa

Child of -

and -

born in Kuuu, Maui, Hawaii

on the - day of -, 1855

\* Was Baptized \*

on the 25th day of December, 1888

According to the Rite of the Roman Catholic Church

by the Rev. Fr. Jacobus

the Sponsors being Maria Ka Malu Lupa

and - as appears

from the Baptismal Register of this Church.

Dated April 1st, 1977

Rev. Jacobus X. Lupa, Jr., Pastor.

STATE OF HAWAII  
DEPARTMENT OF HEALTHRESEARCH AND  
STATISTICS OFFICE

## CERTIFICATE OF DEATH

MAUI MOLOKAI LANAI

DEATHS

1896-1900

Wailuku

DISTRICT

BOOK

Maui

COUNTY

PAGE NO.

Wailuku - 3

Name NUUHIWA PIHENGUDate of Death June 25, 1898 Sex Female Age 42Marital Status --- Race or Nationality HawaiianResidence WailukuPlace of Birth --- Place of Death WailukuCause of Death ---Duration of Illness --- Years --- Months --- Days --- Resident or Non-Resident ---Attending Physician ---Cemetery or Place of Burial ---Date Recorded --- --- LOCAL REGISTRARTHE ABOVE IS A TRUE COPY OF THE RECORD ON FILE IN THE  
STATE OF HAWAII DEPARTMENT OF HEALTH  
RESEARCH AND STATISTICS OFFICEJan. 22, 1988  
DATEGeorge D. Pohu  
STATE REGISTRARRS-45 8/73 1M NOTE: This certificate is not valid if it has been altered in any way whatsoever or if  
bc C 44263 12/23/87 not bear the raised seal of the State of Hawaii Department of Health.

No. 10266 Makai Kailua, February 12, 1848 Page 476

Greetings to the Land Commissioners: I hereby state the claim for my house lot. It is makai in the ahupua'a of Puua 3. The length is 56 fathoms and the width is  $41 \frac{3}{6}$  fathoms - a circumference of 97  $\frac{3}{6}$  fathoms. Kaiwiki is the remaining witness of this becoming my house lot.

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This claim is in the ahupua'a of Puua 3, in three 'ili, Pahoa, Lehelehe, and Ilipehu. These 'ili are bounded by Hauloa on the north, by Kamuku 1 on the south, by Hihimanu on the west, by Kanulehelehe on the east. The konohiki has 14 ko'ele kihapai /within my land/. Two kihapai for me are at Moonuiohua, and 2 kihapai are at Kamuku.

MAKAI

No. 10267 Molowaole Kailua, February 14, 1848

Greetings to the Land Commissioners: I hereby state my claim for land in the ahupua'a of Puua 2. There is an 'ili, named Ohiki 2; its length is 170 fathoms and its width is 15. This land is bounded by Ohiki 1 on the north, Ohiki 3 on the south, Pauaalae on the west, and by Kaalaea on the east.

MOLOWAOLE

No. 10285 Makanana

Greetings to the Land Commissioners: I have a house lot at Kealakehe 2, 40 fathoms by 40 fathoms. Also, I am a konohiki of this entire land from the seashore to far up the mountain. It is bounded by Kealakehe 1 on the east, by Kaole on the west. It was from Kuakini to Kalaaulana, and from him to me.

MAKANANA

No. 10303 Maa Keahuolu, Kailua, Kona, Hawaii, Jan. 24, 1848

Greetings to you, Z. Kaauwai and the Land Commissioners: I hereby state my claim for my land which was bequeathed by my kupunas to my father, Kauhiomahi; however he held his land under Naihe. When my father died he gave me his land. Naihe was the one from whom Kauhiomahi held the land. Afterwards Naihe died and the land was inherited by Aikanaka, who died,

Page 478

bequeathing it to his daughter, Keohokalole, and the land is hers at present. This is finished.

Furthermore, I hereby tell you of my land claims. There are 11 taro kihapai, 10 sweet potato kihapai. These kihapai are in Keahuolu, which are described with the blackness of the ink. Furthermore there is one entire coconut grove, 7 loulou palm trees and 2 breadfruit trees.

Furthermore, at Lanihau 1 I have another claim, received from Kamaooha, with 11 taro kihapai, 2 sweet potato kihapai. If all the kihapais are combined they are a total of 42 /sic/. I am a parent with 6 children.

MAA



Meeting of Natives at Hilo, Island of Hawaii, Thursday, September 16, 1897, to  
Protest Against Annexation.

*Kū'ē: The Hui Aloha 'Āina  
Anti-Annexation Petitions  
1897-1898*

Compiled by Nālani Minton and  
Noenoe K. Silva







## NATIVE HAWAIIAN LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawaii 96813 • Phone (808) 521-2302 • Fax (808) 537-4268



June 19, 2000

### Fourth Update on Hawaiian Home Lands Trust Individual Claims

Aloha,

This is an update on the status of the Hawaiian Home Lands Trust Individual Claims class action lawsuit.

#### LAWSUIT:

We finally have good news! As many of you already know from the news reports, last Friday, June 9, 2000, the attorneys for the plaintiffs (Carl Varady, Stan Levin, and Tom Grande) won a big victory for the claimants. Judge Victoria Marks ruled in favor of the plaintiffs/claimants on all three issues that were being argued that day:

- First, the Judge said that plaintiff/claimants are properly before the court and have a right to sue the State. (The State, who is opposing the claimants, argued that we did not have a right to sue because, among other things, the State feels the Legislature never took any action on the claims. The Judge disagreed with the State and agreed with the plaintiffs' lawyers that the plaintiffs/claimants were properly in court, and that she can hear the case.)
- Second, Judge Marks granted class certification to the claimants. This means that the court formally accepted the case as a class action, and recognized all of you claimants as a "class" of people with the same problem. The lawsuit will now proceed as a class action and you claimants do not have to file individual lawsuits on your own. If the Judge had denied us class certification, then each of you would have had to hire your own attorney, go to court and fight the state on the big issue-disputes as well as your specific claim.
- Finally, the Judge ordered the State to give the lawyers for the claimants the names and addresses of all of the claimants - this will help the lawyers to get in contact with everyone who filed a claim.

This does not mean that the case is over. Friday's win was only the first step in the lawsuit. As you may recall, in our last update letter, we explained that the lawsuit has three parts:

1. The first part of the case determined whether the court has *jurisdiction* - meaning the right and the power to make decisions about this case. (This first part is what the judge

*Services made possible with major funding from the Office of Hawaiian Affairs.*

Māhala Upright, straight, stately, tall and straight as a tree without branches, sharply peaked, as mountains. Fig., righteous, correct.

decided last Friday.)

2. The second part of the case will resolve some of the big issue disputes the state has had with the claimants during the claims process. For example, one big issue is what kinds of claims are valid claims. You may recall that the governor, through the state Attorney General's office, has continually said that people with waiting list claims should not be part of the claims process and should not be compensated. The state will most likely argue the same thing in this lawsuit and the lawyers for the claimants, of course, will disagree. The court will have to decide these kinds of kinds of disputes.
3. The last part of the case will come up with a standardized method for deciding whether a claimant has suffered a breach of trust, and if so, the appropriate amount of compensation he/she should receive.

### WHAT DO YOU DO NOW?

You, as a claimant, do not have to do anything right now. Eventually, all of you who filed claims will have to present your information to the court so the court can decide if you suffered a breach of trust and are entitled to compensation. But this will happen only after the first three parts are completed. At that point, the court will tell us what we have to do.

For now, hold fast and please keep all of the papers regarding your claim in a safe place. Once the State provides us with all the claimants' names and addresses, a notice will be sent to each of you about the lawsuit. If you are receiving this letter, then it means you are already on our mailing list. **IT IS IMPORTANT FOR YOU TO INFORM US OF ANY CHANGE OF ADDRESS OR TELEPHONE NUMBER.** Please keep us updated on any information that will effect our ability to contact you!

In addition, right now we do not have the State's official list of claimants, so please call and let us know if we have misspelled your name, or are using the wrong name or address for you.

Also, in the past, claimants contacted either the Department of Hawaiian Home Lands or the Attorney General's Office to find out what was happening with the lawsuit. Please do not contact either place since they are your opponents in the lawsuit. Contact NHLC either at our hotline number 545-2650 or our regular business line 521-2302.

We will continue to keep you updated as things progress. You may also call our hotline at 545-2650 from time to time for updates on the case.

Very truly yours,



Melissa W.L. Seu  
Staff Attorney

# STANDARD CERTIFICATE OF BIRTH

## TERRITORY OF HAWAII

3041

1. PLACE OF BIRTH Local Registered No. \_\_\_\_\_ File No. \_\_\_\_\_  
(To be inserted by Registrar)

County \_\_\_\_\_ State \_\_\_\_\_  
Township \_\_\_\_\_ or Village \_\_\_\_\_  
City \_\_\_\_\_ No. 1801 Chapala St. \_\_\_\_\_ Ward \_\_\_\_\_  
(If birth occurred in a hospital or institution, give its NAME instead of street and number) If child is not yet named, make supplemental report, as directed

2. Full name of child Verian Kawalanu Kamaka

3. Sex Female 4. Twin, triplet, or other \_\_\_\_\_ 5. Number, in order of birth \_\_\_\_\_ 6. Premature Yes 7. Legitimate Yes 8. Date of birth May 14 1930  
(If plural births) (Full term) (Month, day, year)

9. Full name of FATHER Joseph Kalani Kamaka 18. Full maiden name of MOTHER Sarah Urea  
10. Residence (usual place of abode) Honolulu 19. Residence (usual place of abode) Honolulu  
(If nonresident, give place and State) (If nonresident, give place and State)

11. Color or Race Hawaiian 12. Age at last birthday 35 (Years) 20. Color or Race Chinese Hawaiian 21. Age at last birthday 40 (Years)  
(State or country) (State or country)

13. Birthplace (city or place) Honolulu, Hawaii 22. Birthplace (city or place) Kauai, Hawaii  
(State or country) (State or country)

14. Trade, profession, or particular kind of work done, as spinner, lawyer, bookkeeper, etc. Teacher 23. Trade, profession, or particular kind of work done, as housekeeper, typist, nurse, clerk, etc. Housework  
15. Industry or business in which work was done, as silk mill, sawmill, bank, etc. Shipping 24. Industry or business in which work was done, as own home, lawyer's office, silk mill, etc. Own home  
16. Date (month and year) last engaged in this work \_\_\_\_\_ 17. Total time (years) spent in this work 18 yrs 19. Date (month and year) last engaged in this work \_\_\_\_\_ 26. Total time (years) spent in this work \_\_\_\_\_

27. Number of children of this mother (At time of this birth and including this child) (a) Born alive and now living 8 (b) Born alive but now dead 2 (c) Stillborn 0

28. If stillborn, period of gestation \_\_\_\_\_ months or weeks 29. Cause of stillbirth \_\_\_\_\_ Before labor \_\_\_\_\_ During labor \_\_\_\_\_

29a. Was a prophylactic for ophthalmia neonatorum used? Yes If so, what? \_\_\_\_\_

### CERTIFICATE OF ATTENDING PHYSICIAN

I hereby certify that I attended the birth of this child, who was born at 11:58 a.m. on the date above stated  
(State alive or stillborn)

(When there was no attending physician then the father or mother should make this return.)

(Signed) Joseph Kalani Kamaka  
(Father) Informant  
(Physician or Informant)

Given name added from a supplemental report \_\_\_\_\_  
(Date) \_\_\_\_\_

Address \_\_\_\_\_  
Date Recorded MAY 16 1930 19 L.M. Gibson  
(or Registered) \_\_\_\_\_ Registrar

Registrar General

Date Filed, Office of Registrar General MAY 16 1930

I certify that the foregoing is a true and correct copy of the original record on file in the Registrar and Statistics Office, Hawaii State Department of Health.

Date filed \_\_\_\_\_

JUN 26 1970

Wm. J. Johnston  
REGISTRAR

PLACE OF MARRIAGE  
County of Honolulu  
Township of \_\_\_\_\_  
or  
Village of \_\_\_\_\_  
or  
City of Honolulu No. \_\_\_\_\_

## TERRITORY OF HAWAII

## RECORD OF MARRIAGE

5630

Quesada

MALE  
Full name of groom Joseph K. Hironaka  
Residence 2nd P. Kane Honolulu  
Age at last birthday 22 years Nationality Hawa  
Bachelor, Widower or Divorced \_\_\_\_\_ (2nd-3rd)  
(State or) \_\_\_\_\_ (marriage)  
Birthplace of groom (Country) Honolulu, Oahu  
Length of residence in the Territory of Hawaii \_\_\_\_\_

FATHER  
Full name Koroku Maimawa  
Race Hawa  
Birthplace of father (Country) Maine

MOTHER  
Full maiden name Mrs. Kawaguchi Sana Kameoka  
Race Hawa  
Birthplace of mother (Country) Hawaii

License to marry issued by J. H. Kinsman, J. H.  
Witnesses to marriage ceremony Mrs. Cassie Murray, Mrs. C. J.

FEMALE  
Full name of bride Mrs. Cassie Murray  
Residence Hesha Kane Honolulu  
Age at last birthday 22 years Nationality San Hawai  
Maid, Widow or Divorced \_\_\_\_\_ (2nd-3rd)  
(State or) \_\_\_\_\_ (marriage)  
Birthplace of bride (Country) Miss Maui  
Length of residence in the Territory of Hawaii \_\_\_\_\_

FATHER  
Full name Mr. Orona  
Race Chinese  
Birthplace of father (Country) H China

MOTHER  
Full maiden name Sarah Ana  
Race Hawa  
Birthplace of mother (Country) Hawa Maui

Date of license to marry Nov. 16, 1912

Entered NOV 18 1912 10

Filed NOV 18 1912 19

John L. Loma  
Registrar  
John L. Loma  
Secretary, Territorial Board of Health

I HEREBY CERTIFY that Joseph K. Hironaka  
and Mrs. Cassie Murray were  
joined in marriage by me, on the 16 day of  
City Honolulu A. D. 1912 in  
County of Honolulu Territory of Hawaii.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 18 day of Nov A. D. 1912  
(Signed) R. D. Murray



UNRECORDED		UNRECORDED	
<p>WILMERS, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of America, for consideration at its regular session in December, A. D. 1897; therefore,</p> <p>W. A. the undersigned, native Hawaiian citizen and residents of the District of Hawaii, who are members of the HAWAIIAN PATRIOTIC LEAGUE, who are members of the LEAGUE, and others who are in sympathy with the said League, solemnly protest against the annexation of the said Islands to the said United States of America in any form or shape.</p>		<p>WILMERS, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of America, for consideration at its regular session in December, A. D. 1897; therefore,</p> <p>W. A. the undersigned, native Hawaiian citizen and residents of the District of Hawaii, who are members of the HAWAIIAN PATRIOTIC LEAGUE, who are members of the LEAGUE, and others who are in sympathy with the said League, solemnly protest against the annexation of the said Islands to the said United States of America in any form or shape.</p>	
INDIA-NAME	AGE	INDIA-NAME	AGE
J. W. Keenani	19	J. W. Keenani	44
S. D. Kaka	59	Arthur Omoa	55
J. W. Kaka	41	J. H. Makela	25
Nihoa	56	Jack Ruchardt	40
Kauaihu	26	J. W. Akahaka	20
Ailuhine	24	William	20
Koa	18	S. L. Kaka	45
J. B. Kaka	67	J. G. Kaka	15
Kokakiki	67	W. W. Kaka	25
Sam. Luke Motadi	15	Marion	43
J. R. Kaka	38	Henry Kaka	45
J. Kaka	11	J. W. Kaka	35
J. Kaka	38	J. W. Kaka	29
J. Kaka	60	J. W. Kaka	64
J. Kaka	57	P. M. Kaka	64
Sam. Kakanani	36	John. Kaka	20
W. H. Kaka	57	J. S. Kaka	27
J. B. Kaka	52	W. Kaka	16
	21	Kakanani	20

Prepared by: E. Canali  
 (dated: 8/23/99)  
 Title Name: Roxane A. Mick

The Name: Roxane A. Mick

Roxane Naom, Arakat  
Applicant/Leasee/Designee

Applicant/Lessor/Designee

8561 70.10 3.06  
%Harm:

BRP: 7/10/2010

906902515108

387

12345678910111213141516171819202122232425262728293031323334353637383940414243444546474849505152535455565758596061626364656667686970717273747576777879808182838485868788899091929394959697989910010110210310410510610710810911011111211311411511611711811912012112212312412512612712812913013113213313413513613713813914014114214314414514614714814915015115215315415515615715815916016116216316416516616716816917017117217317417517617717817918018118218318418518618718818919019119219319419519619719819920020120220320420520620720820921021121221321421521621721821922022122222322422522622722822923023123223323423523623723823924024124224324424524624724824925025125225325425525625725825926026126226326426526626726826927027127227327427527627727827928028128228328428528628728828929029129229329429529629729829930030130230330430530630730830931031131231331431531631731831932032132232332432532632732832933033133233333433533633733833934034134234334434534634734834935035135235335435535635735835936036136236336436536636736836937037137237337437537637737837938038138238338438538638738838939039139239339439539639739839940040140240340440540640740840941041141241341441541641741841942042142242342442542642742842943043143243343443543643743843944044144244344444544644744844945045145245345445545645745845946046146246346446546646746846947047147247347447547647747847948048148248348448548648748848949049149249349449549649749849950050150250350450550650750850951051151251351451551651751851952052152252352452552652752852953053153253353453553653753853954054154254354454554654754854955055155255355455555655755855956056156256356456556656756856957057157257357457557657757857958058158258358458558658758858959059159259359459559659759859960060160260360460560660760860961061161261361461561661761861962062162262362462562662762862963063163263363463563663763863964064164264364464564664764864965065165265365465565665765865966066166266366466566666766866967067167267367467567667767867968068168268368468568668768868969069169269369469569669769869970070170270370470570670770870971071171271371471571671771871972072172272372472572672772872973073173273373473573673773873974074174274374474574674774874975075175275375475575675775875976076176276376476576676776876977077177277377477577677777877978078178278378478578678778878979079179279379479579679779879980080180280380480580680780880981081181281381481581681781881982082182282382482582682782882983083183283383483583683783883984084184284384484584684784884985085185285385485585685785885986086186286386486586686786886987087187287387487587687787887988088188288388488588688788888989089189289389489589689789889990090190290390490590690790890991091191291391491591691791891992092192292392492592692792892993093193293393493593693793893994094194294394494594694794894995095195295395495595695795895996096196296396496596696796896997097197297397497597697797897998098198298398498598698798898999099199299399499599699799899910001001100210031004100510061007100810091010101110121013101410151016101710181019102010211022102310241025102610271028102910301031103210331034103510361037103810391040104110421043104410451046104710481049105010511052105310541055105610571058105910601061106210631064106510661067106810691070107110721073107410751076107710781079108010811082108310841085108610871088108910901091109210931094109510961097109810991100110111021103110411051106110711081109111011111112111311141115111611171118111911201121112211231124112511261127112811291130113111321133113411351136113711381139114011411142114311441145114611471148114911501151115211531154115511561157115811591160116111621163116411651166116711681169117011711172117311741175117611771178117911801181118211831184118511861187118811891190119111921193119411951196119711981199120012011202120312041205120612071208120912101211121212131214121512161217121812191220122112221223122412251226122712281229123012311232123312341235123612371238123912401241124212431244124512461247124812491250125112521253125412551256125712581259126012611262126312641265126612671268126912701271127212731274127512761277127812791280128112821283128412851286128712881289129012911292129312941295129612971298129913001

Dr. W. H. H. H. H.

56/512

1

**VIC BARRY PHOTOS: OCEAN CITY**

Scott's Marriage Card

[illegible]



## University of Hawai'i at Mānoa

### Ethnic Studies Department

1859 East-West Road • Room 115 • Honolulu, Hawai'i 96822  
Telephone: (808) 956-8086 • Facsimile: (808) 956-9494

August 30, 2000  
Honolulu, Hawai'i

Senators Inouye and Akaka, Congresswoman Mink, Congressman Abercrombie, and members of the Senate Committee on Indian Affairs, aloha, I am Dr. Davianna Pomaika'i McGregor, and I am testifying in support of the bill introduced by Senator Daniel Akaka to afford federal recognition of Native Hawaiians. I am a historian of Hawai'i and the Pacific and teach as an Associate Professor of Ethnic Studies at the University of Hawai'i Manoa. I have three major points to contribute as you consider this bill.

First, there are 2 sections of the bill, as drafted, which I believe need to be amended:

- Section 7(a)(2)(A) relating to the establishment of a 9 member Commission to certify that the adult members of the Native Hawaiian community on the roll meet the definition of Native Hawaiian should provide for the establishment of this Commission by the President of the United States.

Section 7(b)(1)(A) which provides for nominations of adult members to serve on the Native Hawaiian Interim Governing Council at general meetings should be amended to provide for a nomination process wherein candidates seeking election should gather signatures of nomination by 50 adult members on the roll and file to run by a specified deadline.

McGregor – August 30, 2000 / 1

An Equal Opportunity/Affirmative Action Institution



Second, in support of the findings of the bill which refers to the continuity of a distinct Native Hawaiian community and Hawaiian cultural, social, and political institutions, I have incorporated as part of my testimony attachments #1 and #2.

- Attachment #1 is the introductory chapter to "Native Hawaiian and Local Cultural Assessment Project: Phase I Problems/Assets identification," Luciano Minerbi, Davianna McGregor, Jon K. Matsuoka editors, Honolulu: State of Hawai'i Department of Health Hawai'i Environmental Risk Ranking Project, June, 1993. This chapter, which I authored, provides an overview assessment of the continuity of Hawaiian subsistence, cultural and religious custom and practice; 'ohana networks; and ties to ancestral and national lands.
- Attachment #2 is an excerpt of the Governor's Moloka'i Subsistence Task Force Final Report, June 1994 which documents the continuity of Hawaiian subsistence customs, beliefs, and practices on the island of Moloka'i.
- Please note that the following technical reports also provide documentation of the continuity of Hawaiian subsistence, cultural, and religious belief, custom, and practice; 'ohana networks; and ties to ancestral and national lands:

Hawai'i Externalities Workbook, "Chapter 8.0 Native Hawaiian Impacts." Jon Matsuoka, Davianna McGregor, and Luciano Minerbi,, with Energy Research Group, Inc. for Hawaiian Electric Company, July 1997.

"Contemporary Subsistence Fishing Practices Around Kaho'olawe: Study Conducted for the NOAA National Marine Sanctuaries Program." Davianna McGregor, Noa Emmett Aluli, Manny Kuloloio, Malia Akutagawa, and Kehau Walker. Kaunakakai: Protect Kaho'olawe Fund, May 1997.

"Traditional Hawaiian Cultural, Spiritual, and Subsistence Beliefs, Customs, and Practices and Waiahole, Waikane, Hakipu'u, and Kahana" Davianna McGregor, Native Hawaiian Advisory Council for Office of Hawaiian Affairs, September 1995.

"Kaho'olawe Use Plan," PBR-Hawai'i, for Kaho'olawe Island Reserve Commission, 1995.

"Kalo Kanu O Ka 'Aina: A Cultural Landscape Study of Ke'anae and Wailuanui, Island of Maui," Group 70, Inc., Cultural Surveys Hawai'i, Inc., Davianna McGregor, for the County of Maui Planning Department and the Maui County Cultural Resources Commission, May 1995.

"Native Hawaiian Ethnographic Study for the Hawai'i Geothermal Project Environmental Impact Study," with Jon K. Matsuoka, Davianna McGregor, Luciano Minerbi for the Oakridge National Laboratories Environmental Impact Study for the U.S. Department of Energy, 1993.

"Governor's Moloka'i Subsistence Task Force Report," Jon K. Matsuoka, Davianna McGregor, Luciano Minerbi, Malia Akutagawa, Moloka'i Department of Business, Economic Development, and Tourism, 1993.

"Sociocultural Impact Assessment" in the Environmental Impact Statement for the Commerical Satellite Launching Facility, Palima Point, Ka'u, Hawai'i, Jon Matsuoka, Davianna McGregor, 1991.

Third, in support of the findings of the bill which refer to the historical trust relationship between the U.S. Government and the Native Hawaiian people I am incorporating as part of my testimony Attachment #3. This attachment cites key public laws and Congressional Committee reports which document that a trust relationship between Native Hawaiians and the U.S. Government similar to that of Native Americans and the U.S. Government has evolved as the official or de facto policy of the U.S. Congress toward Native Hawaiians. This trust relationship, however, is not formalized and requires special legislation, such as this bill, to formally recognize a government-to-government relationship between Native Hawaiians and the U.S. Government. **One important additional point to draw out is that, after Annexation, there is a distinction in U.S. policy toward Hawai'i and the multi-ethnic peoples of Hawai'i versus U.S. policy toward Native Hawaiians.** The bill being heard today addresses U.S. policy toward Native Hawaiians it does not address U.S. policy toward Hawai'i and its multi-ethnic

citizens. The United Nations is the appropriate arena to take up and resolve the status of the multi-ethnic nation of Hawai'i. The U.S. Congress is the appropriate arena to resolve issues relating to the entitlements and claims of the native people of Hawai'i.

As a Native Hawaiian, I believe that we need to protect the entitlements which we have as Native Hawaiians for living Hawaiians our descendants. As a Native Hawaiian scholar it is my expert opinion that Native Hawaiians have a unique and distinct claim to the Hawaiian national lands which were designated as government and crown lands of the Kingdom of Hawai'i at the time of Ka Mahele. These lands were illegally seized by the Provisional Government and turned over to the Republic of Hawai'i which ceded those lands to the U.S. Government. Out of these Hawaiian national lands which were ceded, the federal government established two land trusts for native Hawaiians of at least one-half Hawaiian ancestry – the Hawaiian Home Lands and the ceded public lands trust. I do not believe that non-Hawaiians have claims and entitlements which equal that of Native Hawaiians to the cultural and natural resources of these Hawaiian national lands. I believe that the perpetuation of Hawaiian language, culture, and spiritual beliefs; the pursuit of subsistence fishing, gathering, and farming; access to health care and education are entitlements for Native Hawaiians. These entitlements must be recognized by the U.S. government and acknowledged and respected by those who choose to make Hawai'i their home.

By contrast, the effort to re-establish the independence of Hawai'i is not a matter that can be uniquely and distinctly reserved for Native Hawaiians to strive for and support. The Kingdom of Hawai'i was a kingdom of multi-ethnic citizens. All peoples who are born in Hawai'i and for whom Hawai'i is their only homeland have a right to participate in the process of self-determination of the multi-ethnic people of Hawai'i. Should the people of Hawai'i, like, most

recently the people of East Timor, vote for independent status under the oversight of the United Nations, then the Native Hawaiians will still be a minority group with no automatic claim to our entitlements as the indigenous peoples of these islands. Unless and until a process for Hawaiian recognition as laid out in this bill is set up under U.S. law, there will be no precedent for Hawaiian claims within and independent Hawai'i government. The recognition of the sovereign status of Native Hawaiians and the establishment of government to government relations between the United States government and the sovereign Native Hawaiian government can only strengthen the position of Native Hawaiians within a multi-ethnic Hawai'i social system – whether it is incorporated within the United States of America or independent of that federated government.

Thank you for the opportunity to share my mana'o. Thank you for your efforts to support the self-determination of the Native Hawaiian people and our descendants. Aloha.

# Native Hawaiian and Local Cultural Assessment Project

## Phase I Problems/Assets Identification

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for

CAN-DO  
(Cultural Action Network for Developing Options)

and

HERR  
(The Hawai'i Environmental Risk Ranking Project)  
The State Department of Health  
Honolulu, Hawai'i

## Perpetuation of Hawaiian Custom Practice in Rural Hawaiian Communities

Attachment #1 - McGregor

### Contemporary Conditions of Native Hawaiians

In 1988, approximately 216,563 *Ka Po'e Hawai'i* comprised 20.6 percent of the overall Hawai'i population.<sup>1</sup> In 1984, there were 8,200 persons of pure Hawaiian ancestry. There were another 72,700 persons who had more than half but less than 100 percent Hawaiian ancestry. Only 24.2 percent of all Hawaiians lived outside of O'ahu.<sup>2</sup>

In 1988, Hawaiians earned low incomes, comparable to the most recently arrived immigrant groups, held low status jobs, and had the highest rate of unemployment of all the ethnic groups in the islands. By contrast, the descendants of Caucasian, Japanese and Chinese immigrants earned high incomes and held a greater portion of the managerial and professional jobs in Hawai'i. Moreover, a significant portion of the native Hawaiians earned incomes that were insufficient to provide for their families and thus received public assistance to supplement their incomes. Among these, some depended entirely upon welfare support to meet their day-to-day needs.<sup>3</sup>

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<sup>1</sup> Hawai'i State Department of Health, Hawai'i Health Surveillance Program in Department of Business, Economic Development & Tourism, The State of Hawai'i Data Book, 1991, A Statistical Abstract Table 22., 41. The 1990 Census, however, reported that there were only 138,742 Hawaiians comprising only 12.5 percent of the population. The difference in the two sources is due to the difference in handling persons of mixed parentage. The census did not have a mixed category and assigned persons of mixed ancestry to one of the categories on the basis of self-identification or the race of the father. The Health Surveillance Program counts anyone with any Hawaiian ancestry on their birth certificate as a Hawaiian.

<sup>2</sup> Office of Hawaiian Affairs. 1986. "Population Survey / Needs Assessment, Final Report." Honolulu: Office of Hawaiian Affairs. In this study of the Health Surveillance Program data, the Office of Hawaiian Affairs estimated that there were 208,476 Hawaiians in Hawai'i in 1984, out of which 72,709 had 50 percent to 99 percent Hawaiian ancestry and 8,244 had 100 percent Hawaiian ancestry.

<sup>3</sup> Health Surveillance Program. 1988. According to the 1988 Health Surveillance Program, 18.9 percent of the Hawaiian families earned less than \$15,000 per year as compared to 12.5 percent of families in other ethnic groups. In the \$60,000 or more category, only 13.6 percent of the Hawaiian families earned incomes at that level, while 21.4 percent of the families in other ethnic groups earned incomes at that level. According to the Research and Evaluation Division of the Department of Human Services 20,487 Hawaiian families received public financial assistance and Medicaid in 1990. This represented 26 percent of all of the families in Hawai'i who received financial assistance and Medicaid in 1990. The same source reported that 14,956 Hawaiian families received Aid to Families with Dependent Children (AFDC) in 1990. This represented one-third (33.4%) of all of the families in Hawai'i who received (AFDC) in 1990.

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In 1992 35 percent of the adult inmate pop facilities were of Hawaiian ancestry.<sup>4</sup>

In 1980, Hawaiians had the lowest life expectancy among the ethnic groups in Hawai'i, at 67.6 years compared to 73 for Caucasians, 77 for Japanese, 72 for Filipinos, and 76 for Chinese.<sup>5</sup>

In 1989, the Hawaiian infant mortality rate was 11.8 per thousand. This represented 44 percent of the infant deaths in the state in 1989. Among all Hawaiians, heart disease was the major cause of death. While Hawaiians did not have the highest incidence of cancer, they had the highest mortality rates for most cancers. Hawaiian men had the highest incidence of lung cancer and Hawaiian women had the high rates of breast cancer. Hawaiians over age 65 had the highest incidence of chronic diseases and were disproportionately afflicted by diabetes.<sup>6</sup>

These socio-economic statistics reflect a disparity in the standard of living between native Hawaiians and Caucasians, Japanese and Chinese in Hawai'i. They also indicate a significant degree of alienation from the social system and the political power structure of modern Hawai'i. On one hand, it represents the effect of institutionalized cultural barriers which prevent equal access to opportunities in the educational system, health care delivery systems and adequate representation in the judicial system.<sup>7</sup> On the other hand, it reflects the persistence of Hawaiian cultural customs and practices in rural-based Hawaiian communities where Hawaiians did not assimilate into Westernized Hawai'i society.

Much of the socio-economic disorientation suffered by *Ka Po'e Hawai'i* today can be attributed to dislocation from ancestral homelands and related disruptions to the traditional family and social order. A survey of the needs of *Ka Po'e Hawai'i* conducted in 1976 by the non-profit Hawaiian corporation Alu Like, Inc., concluded:

<sup>4</sup> Department of Public Safety - Corrections Division, "Distribution of the Inmate Population by Ethnicity and Facility as of June 30, 1992."

<sup>5</sup> Kanahele, George S. 1982. "Current Facts and Figures About Hawaiians". Honolulu: Project WAIHAHA. 8.

<sup>6</sup> Papa Ola Lokahi. 1992. Native Hawaiian Health Data Book. Honolulu.

<sup>7</sup> Alu Like. 1983. "Summary of the Analysis of the Needs Assessment Survey and Related Data 1976". Honolulu: Kamehameha Schools / Bishop Estate. Native Hawaiian Health Research Consortium, Mental Health Task Force, Alu Like, Inc. 1985. E Ola Mau: Native Hawaiian Health Needs Study: Mental Health Task Force Report. Honolulu: Native Hawaiian Health Research Consortium, Alu Like, Inc.

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"Different categories of the population have different needs. The urban higher-income group, both men and women, lack adequate educational preparation for the better jobs they want. One-third report a desire for housing that they cannot afford. The lower-income urban group suffers from joblessness and insufficient supply of low-cost housing in urban areas, and consequent doubling-up of families. The rural group suffers from lack of job opportunities, a limited range of job choices, and, particularly on O'ahu, a steady loss of access to natural resources.

Hawaiians in all groups frequently report loss of pride and bitterness resulting from historic loss of their family lands and their homeland."<sup>8</sup>

These statistics reflect the individual and collective pain, bitterness and trauma of a people whose sovereignty has been and remains suppressed; who are dispossessed in their own homeland; and who lack control over the resources of their ancestral lands to provide for the welfare of their people.

### Historical Background

*Ka Po'e Hawai'i* were forged as a self-sufficient, sovereign and distinct people sharing a common ancestry; language; cultural and spiritual customs, beliefs, and practices; territory; and subsistence social system through an extended period of migrations and settlements long before the twelfth century. *Aloha 'āina*, love the land, *aloha in na akua*, love the gods, *aloha kekahi i kekahi*, love one another, expresses the three precepts which formed the core of the Hawaiian people's philosophy, world view and belief system. It was important for a Hawaiian to sustain supportive, nurturing and harmonious relations with the land, the gods, and each other, particularly their *'ohana* or extended family. Moreover, the Hawaiian, the land, and the gods were also spiritually, culturally, and biologically united as one - *lokaahi* - by lineal descent. In their *mo'oku'auhau*, family genealogy chants, Hawaiians traced their lineal ancestry to historical figures and ultimately, through them, to various deities and gods of the land, ocean, forest and nature.<sup>9</sup>

<sup>8</sup> Alu Like. 1976.

<sup>9</sup> Handy, Craighill and Mary Kawena Pukui. 1958. Reprint 1981. The Polynesian Family System in Ka'u, Hawai'i. Wellington: Polynesian Society. Tokyo: Charles E. Tuttle Company, Inc., 1976). Rubellite Kawena Johnson. 1981. Kumulipo: The Hawaiian Hymn of Creation, Volume One. Honolulu: Topgallant Publishing Co., Ltd.



The land and all of nature was the source of life for Hawaiians - not only as the origin of humanity, but also as the source of natural resources for day-to-day subsistence. The Hawaiians related to the land as an ancestor and dear friend. They honored and worshipped the life forces of nature as gods. They did not possess or own the land or its abundant resources. This was inconceivable. Instead, they maintained stewardship over it - planting and fishing according to the moon phases and the changes from rainy to dry seasons.

The traditional Hawaiian land system evolved to provide Hawaiians access to the resources they would need for subsistence and to allow for stewardship over the land to the lineal descendants associated with particular ancestral *'aumakua*, deities and *akua*, gods. The basic unit was an *ahupua'a* which usually coincided with a valley system. Within the *ahupua'a*, *'ohana* or extended families of *maka'ainana*, commoners, were responsible for cultivation and stewardship of *'ili*, parcels of land which usually ran from the mountain to the sea and afforded access to all of the natural resource zones. There was no need for individual accumulation of wealth, for the land provided all of the necessities of life and the *'ohana* collectively performed work projects as necessary.<sup>10</sup>

Between 1100 and 1600 a class of *ali'i*, ruling chiefs, emerged and imposed their control over the land and the people. Ultimately, all of the lands of Hawai'i, together with the people living upon them, were divided up among the chiefs. While the tenure of a chief over the land was subject to his ability to defend his control over it, the various *'ohana* of common people remained stable on their designated ancestral lands. The Hawaiians had a saying which referred to the stability of the common people on their lands, "*Ko luna pohaku no ke ka'a ilalo, 'a'ole hiki i ko lalo pohaku ke ka'a*. A stone that is high up can roll down, but a stone that is down cannot roll." In other words, a chief could be overthrown in battle or lose tenure over the land upon the death of his patron chief. However, the common people who lived on the land from the days of their ancestors would not be displaced.<sup>11</sup>

To the extent that Hawaiian society evolved into a socially and economically stratified system by 1600, the responses of the Hawaiian people

<sup>10</sup> Craighill, Handy and Elizabeth Green Handy with Mary Kawena Pukui. 1972. *Native Planters in Old Hawaii, Their Life, Lore and Environment*. Bernice P. Bishop Museum Bulletin 233. Honolulu: Bishop Museum Press.

<sup>11</sup> Handy and Pukui, 1976. Handy, Handy and Pukui. 1972. Mary Kawena Pukui. 1983. *Ōlelo No'eau: Hawaiian Proverbs & Poetical Sayings*. Bernice P. Bishop Museum Special Publication No. 71. Honolulu: Bishop Museum Press. #1833. 198. Patrick V. Kirch. 1985. *Feathered Gods and Fishhooks: An Introduction to Hawaiian Archaeology and Prehistory*. Honolulu: University of Hawai'i Press. Samuel Kamakau. 1965. *Ruling Chiefs of Hawaii*. Honolulu: Kamehameha Schools Press.

to contact and change after 1778 were divergent and the individual social and economic role they played in the society. The acceptance or rejection of Western culture was largely the prerogative of the ruling class of *ali'i*. The common people did not play a major role in determining the political and economic future of Hawai'i. Those factions among the *ali'i* who opposed Western influence were defeated by Kamehameha I in his wars of conquest or by Kamehameha's Council of Chiefs under the leadership of Mo'i Kamehameha II, *Kuhina Nui* Ka'ahumanu, and High Chief Kalanimoku when they instituted the 'Ai Noa or abolition of the state religion.<sup>12</sup>

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### Changes Under the Hawaiian Monarchy

The common people let the *ali'i* take the lead, while they were struggling to survive the burden of contact. Plagued by foreign diseases, the common people were killed on a massive scale. For example, in the year 1804 alone, half of the Hawaiian population died of *ma'i oku'u*, a disease that was either cholera or bubonic plague. When the first census was conducted by missionaries in 1823, it was found that only 135,000 Hawaiians had survived the first forty-five years of contact.<sup>13</sup> The survivors were left to bury their dead and struggle to carry on with life on a subsistence basis.<sup>14</sup>

Beginning in 1820, the foreign resident population steadily increased with the settling of missionaries, sailors, and businessmen in the islands. They, together with the gunboats of their national governments, placed increasing demands upon the monarchy of the Hawaiian Kingdom to grant them the rights of citizenship and to allow them to own land on a private basis. Ultimately they persuaded the Kamehameha dynasty to transform the traditional Hawaiian subsistence social system by instituting a constitutional monarchy; establishing a system of private land ownership; permitting foreigners to naturalize; setting up a capitalist economy based upon

<sup>12</sup> Kamakau. 1961. 219 - 228. David Kalakaua, King of Hawaii. 1988. Reprint 1973. The Legends and Myths of Hawaii: The Fables and Folklore of a Strange People New York: Charles L. Webster and Co. Tokyo: Charles E. Tuttle Co., Ltd. 429 - 446. Marshall Sahlins. 1981. Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom. Ann Arbor: University of Michigan. 55 - 64. Davenport, William. 1948. "The Hawaiian 'Cultural Revolution': Some Economic and Political Considerations." American Anthropologist, LXXI, 1969. 1 - 20. A.L. Kroeber, Anthropology. New York: Harcourt, Brace.

<sup>13</sup> Schmitt, Robert. June 1971. "New Estimates of the Pre-Censal Population of Hawaii," The Journal of the Polynesian Society. 237 - 243. Malo, David. 1839. "On the Decrease of Population of the Hawaiian Islands", translated by L. Andrews. Hawaiian Spectator, Vol. 2, No. 2. 121 - 130.

<sup>14</sup> Handy. 1976. 234 - 235.

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plantation agribusiness; introducing a system of wa  
immigrant laborers on a large-scale. The result was the alienation,  
dispossession, and impoverishment of *Ka Po'e Hawai'i* in a multi-ethnic  
society in which *Ka Po'e Hawai'i* were reduced to a minority. The following  
table shows the population of Hawaiians and part-Hawaiians relative to the  
overall population growth from 1860 through 1988:<sup>15</sup>

Table E. Population

<u>Year</u>	<u>Hawaiians</u>	<u>Part- Hawaiians</u>	<u>Total Population</u>	<u>% Hawaiian &amp; Part</u>
1860	65,647	1,337	69,800	95.9
1890	34,436	6,186	89,990	45.1
1900	29,799	9,857	154,001	25.7
1930	22,636	28,224	368,336	13.8
1960	11,294	91,109	632,772	16.2
1988	9,417	207,146	1,048,702	20.6

Throughout the Twentieth Century Hawaiians had a significantly  
lower life expectancy than other ethnic groups in Hawai'i. The following  
table shows the life expectancy of Hawaiians in comparison to other ethnic  
groups in Hawai'i from 1910 through 1980:<sup>16</sup>

Table F. Estimated Life Expectancy at Birth

<u>Year</u>	<u>Cauc</u>	<u>Chinese</u>	<u>Filipino</u>	<u>Hawaiian</u>	<u>Japn</u>	<u>Other</u>	<u>Total</u>
1910	54.8	54.2	28.1	33.6	50.5	28.4	45.7
1930	61.9	60.1	46.1	41.9	60.1	32.6	53.9
1960	72.8	74.1	71.5	64.6	75.7	62.2	72.4
1980	73	76	72	67.6	77	-	-

Western domination of Hawai'i culminated with the overthrow of the  
monarchy of the Hawaiian Kingdom on January 17, 1893 by American  
businessmen backed up by the U.S. marines.

<sup>15</sup> Schmitt, Robert C. 1977. Historical Statistics Of Hawai'i. Honolulu: The University Press of Hawai'i.

<sup>16</sup> Hawai'i State Department of Health, R & S Report. "Life Tables By Ethnic Group For Hawai'i, 1920 - 1970 by Chai Bin Park, Robert W. Gardner, & Eleanor C. Nordyke. For 1980 see above #5.

The clearest indictment of the illegal role of overthrowing the monarchy of the Hawaiian Kingdom are the words of President Grover Cleveland in his report to the U.S. Congress on December 18, 1893: Attachment #1 - McGregor

"The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives. . . .

But for the landing of the United States forces upon false pretexes respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government. . . .

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration . . .

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. . . .

I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."<sup>17</sup>

American business interests in Hawai'i rejected the position and diplomatic efforts of President Cleveland to restore Queen Lili'uokalani to the throne. Their Provisional Government and its successor, the Republic of Hawai'i continued to usurp the power of the monarchy and suppress Hawaiian sovereignty. In 1898, the Republic of Hawai'i annexed itself to the United States government. *Ka Po'e Hawai'i*, however, never directly relinquished or surrendered their claims to sovereignty as a people or over their national lands, either through the monarchy or through a plebiscite or referendum. Therefore, the sovereign claims of *Ka Po'e Hawai'i* persisted and continued to be exercised to various degrees throughout the 20th century

<sup>17</sup> U.S. House of Representatives, 53rd Congress, 2nd Session, December 21, 1893. 13 -14.

even though they did not enjoy the benefit of resolution.

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### Survival of the Hawaiian Culture

The present generation of *Ka Po'e Hawai'i* stand upon the threshold of history as no previous generation of Hawaiians. Since first contact with Europeans and Americans, generation after generation of Hawaiians have faced the specter of decline, displacement and impoverishment. However, the possibility of extinction as a people with a distinct language, culture and land base has never been so imminent and real as it is today for Hawaiians today. Action or inaction on their part will determine whether the Hawaiian language, culture, religion, subsistence farming, and fishing and land base will survive or gradually disappear with the passing away of their *kupuna*, elders, who still practice the culture.

At each critical juncture of Hawaii's history, *Ka Po'e Hawai'i* were challenged by changes that would undermine their traditional culture. Some Hawaiians chose to accept those changes. They passively accommodated and adjusted to Western society. Many actively assimilated and participated in Western political social and economic activities. Others chose to stand firm, reject, and resist change - actively or by withdrawing from mainstream economic and political activities.

Of singular importance to the perpetuation of the Hawaiian people are isolated and undeveloped rural communities which were historically bypassed by the mainstream of social and economic development. Hawaiians in these rural areas did not fully assimilate into the changing social system. Instead, they pursued traditional subsistence livelihoods in which they applied cultural customs beliefs, and practices. They also sustained extended family networks through sharing and exchange of food, work, and services. Rural Hawaiians are stubbornly independent, feel a strong attachment to their land and to traditionally cultural customs and practices. They often demonstrate a disdain and mistrust of external influences.

If these last remaining Hawaiian enclaves do not survive into the 21st Century, with the resources that make subsistence economic activities in these areas viable, then, over the next century, *Ka Po'e Hawai'i*, as a distinct people will gradually disappear. Hawaiians will continue to live and reproduce as ethnic Hawaiians and exist side-by-side with other ethnic groups in Hawai'i. However, they will eventually lose the language, culture, religion, land base and livelihoods which distinguish them as the original

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settlers of these islands. They would complete mainstream of local Hawai'i society.

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### Significance to Local Culture

The dynamics describe above relative to the survival of the Hawaiian culture also applies to local culture. At the core of "local culture" is Hawaiian culture. Local culture represents an amalgamation of the Hawaiian culture with the cultures of the various immigrant groups who settled in Hawai'i. In rural plantation communities, the common experience of working on the plantation, living in plantation camp housing, organizing labor unions, communicating across cultural groups in pidgin dialect, intermarrying between ethnic groups, being educated in public schools, and obtaining food from the land and ocean led to the evolution of a common identity as "local." In addition, most of the immigrants were peasants in their countries of origin and shared Hawaiian values of respect for the land and a strong reliance on extended family relations. There was and continues to be a high degree of intermarriage between Hawaiians and other ethnic groups.

The rural and agrarian character of the district remains a dominant feature of life. Local people - Hawaiian, Asian, or Portuguese - hunt, fish, and gather plant material and marine resources for subsistence and other uses. Subsistence activities comprise a major form of recreation and engenders an active network of sharing and exchange between households in the district, between households in the district, related and non-related. Local cultural customs and pidgin English are more common in the rural areas of our islands. These areas border upon and are part of the rural Hawaiian communities. The persistence of local culture is reliant upon the persistence of Hawaiian culture.

### Cultural Perpetuation in Rural Hawaiian Communities

In 1930 4,222 Hawaiians or about 8 percent of the living Hawaiians, still resided in 17 remote rural districts and pursued subsistence economic activities.<sup>18</sup> They were poor and lacked the means to purchase a lot of material goods. The necessities of life were acquired from the land and ocean on a day to day basis. To some outside observers their way of life was

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<sup>18</sup> U.S. Bureau of the Census. 1931. Fifteenth Census of the United States: 1930, Population Second Series, Hawaii: Composition and Characteristics of the Population and Unemployment Washington: U.S. Government Printing Office. 48. Table 2.

substandard and wretched.<sup>19</sup> The dominant trend people was to move out of the rural areas and into urban Honolulu. By 1930, 47 percent of the native Hawaiians lived in Honolulu. Nevertheless, the unbroken continuous relationship that these rural Hawaiians were able to sustain to the land, ocean, streams and sacred places, allowed for the reproduction of the Hawaiian culture to succeeding generations of Hawaiians.

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Two respected University of Hawai'i social scientists who studied ethnic relations in territorial Hawai'i noted the significance of these districts for the continuity of the Hawaiian people and their cultural beliefs and practices. Referring to the 17 districts where Hawaiians were still predominant in 1930, Andrew Lind, in his book An Island Community: Ecological Succession in Hawaii, wrote:

"These racial havens - small -population islands still relatively secure from the strong currents which have swept the archipelago as a whole into the world-complex of trade - are strikingly similar to those which appear in the census of 1853. The dry and rocky portions of Kau, Puna and the Kona coast, the deep valley of Waipio, the wild sections of Hana, Maui, portions of lonely Lanai and Molokai where industrial methods of agriculture have not succeeded, the leper settlement, and Niihau, the island of mystery - these are the places of refuge for some 4,400 or nearly one-fifth, of the native Polynesians. . . ."

"The old fish and poi company, with its accompaniment of tutelary deities, taboos, religion, and magic, still persists in modified form within many of these isolated communities. A small plot of taro and access to the sea and the mountains are apparently all that is required for the satisfaction of their material wants. The wage from an occasional day's work on the government road enables them to purchase the necessary supplies which the old economy cannot now provide. . . . The natives themselves have found these rural havens where the economy of life to which they are best adapted can survive."<sup>20</sup>

<sup>19</sup> Hormann, Bernhard. 1951. "Native Welfare in Hawaii," What People in Hawaii Are Saying and Doing. Honolulu: Romanzo Adams Social Research Laboratory, University of Hawai'i. Report No. 19. 6. Located in Hawaiian-Pacific Collection, University of Hawai'i Hamilton Library.

<sup>20</sup> Lind, Andrew. 1938. Reprint 1968. An Island Community: Ecological Succession In Hawaii. Chicago: The University of Chicago Press. New York: Greenwood Press. 102-103. The sentence preceding the paragraph that I quoted reads: "The 1930 census specified seventeen remote enumeration districts in which the numerical predominance of the Hawaiian is still maintained, and in fourteen of these areas the pure and part-Hawaiians constitute more than two-thirds of the total inhabitants." His figure of 4,400 is slightly more than the census of 1930

Bernard Hormann also made a special note of these communities as the last retreats of Hawaiian civilization:

"One may go to the so-called isolated Hawaiian communities, such as Hana and Kahakuloa on Maui, or Milopii [sic. Milolii] on Hawaii, or Haena on Kauai, or villages on Molokai, and find a population with a large Hawaiian admixture. These are not vital vibrant folk communities. . . . To be sure, aspects of the old way of life survive. Fishing and taro-growing provide an important part of the diet. Traces of the Hawaiian family and kinship system can be seen."<sup>21</sup>

These traditional Hawaiian rural communities have been pivotal in the perpetuation of native Hawaiian society into the 1990's. This social phenomenon may be compared to the "*kipuka*" phenomenon nature.

Botanists who study the natural rainforest in the area of the active Kilauea volcano have observed that lava flows which destroy and cover up large areas of forest lands, leave little oases of native trees and plants in their wake which are called *kipuka*. From these natural *kipuka* come the seeds and spores for the eventual regeneration of the native flora upon the fresh lava. For contemporary Hawaiians, the traditional Hawaiian rural communities are cultural *kipuka* from which Hawaiian culture can be regenerated and revitalized in the contemporary setting.

Rural Hawaiians who live in these "cultural *kipuka*" still acquire the basic necessities for their families through subsistence activities upon the land by employing traditional knowledge and practices passed down to them from their kupuna. Family knowledge about prime fishing grounds and the types of fish which frequent the ocean in their district at different times of year usually assure Hawaiian fishermen of successful fishing expeditions. Many Hawaiians in rural districts continue to cultivate fish in ponds and the open ocean by regularly feeding the fish in conjunction with making offerings at the *ku'ula* shrines that marked their ocean fishing grounds. Taro

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counted for these seventeen remote districts that Lind refers to. His estimate of one-fifth of the native Polynesians would be accurate if he considered the population in those districts to be pure Hawaiian. There were 22,636 pure Hawaiians in 1930. While the majority were pure Hawaiian, there was also a number of Hawaiians in these districts who were offspring of Chinese-Hawaiian marriages.

<sup>21</sup> Hormann. 1951. Hormann saw these areas as retreats for those who could not compete in the broader society, like slums in the city. While he acknowledged their function as providing Hawaiians with a continuity to their cultural past, he considered the way of life in these areas to be "tragic".

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and other domestic crops are planted by the moon p growth. Rural families take advantage of seasonal fruits and marine life for their regular diet. Native plants are still utilized for healing of illness by traditional methods which involved both physical and spiritual cleansing and dedication. Cultural knowledge attached to the traditional names of places, winds and rains of their district informed rural Hawaiians about the affect of the dynamic forces of nature upon the ocean and the land in their area. Legends and chants inform them about how their ancestors coped with such elements. Thus, in these rural communities, Hawaiian custom, belief, and practice continue to be a practical part of every day life, not only for the old people, but also for the middle aged and the young. By contrast, such customs and beliefs have assumed an air of mystery and superstition for urban Hawaiians whose day-to-day lives depended solely upon wage earning activities in a modern commercial economic system.

### Historical Development of Cultural *Kipuka*

Rural districts where cultural continuity has been the strongest were and remain relatively isolated. Due to the lack of good anchorage and harbors, early traders often bypassed these districts in favor of more accessible areas. The missionaries entered these areas and established permanent stations during a later period than in other parts of Hawai'i. Thus, traditional Hawaiian spiritual beliefs and practices persisted there, without competition, for a longer period of time. As Christian influences entered these areas, they co-existed with traditional beliefs and practices. The geography of these districts discouraged the widespread or long-term development of sugar plantations in these districts. In the arid areas, the lack of water resources made development of sugar plantations unfeasible. In the areas with sufficient rainfall, the terrain was too steep or rugged for plantation agriculture. Where plantation agriculture failed on Moloka'i and the Hana district, ranches were able to succeed. The ranches employed Hawaiian men as cowboys and allowed them to live with their families in these isolated districts and pursue traditional fishing, gathering, and hunting activities to supplement their wages.

Historically very few *haole* settled in these districts and there was very little interaction of Hawaiians with the outside community. Immigrant Chinese laborers were predominantly male. They completed their contracts on the plantation and did not return home or move to the mainland were attracted to the wetland districts, where they leased or rented lands from the Hawaiians for the cultivation of rice. Certain Chinese served as middlemen for the Hawaiian farmers and fishermen. They marketed whatever taro and fish Hawaiians desired to sell, and in return they brought consumer goods for

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sale or barter into these districts. Where there was a                      Attachment #1 - McGregor  
 invariably owned by a Chinese, who in some cases was married to a Hawaiian  
 woman. There was a high ratio of intermarriage by the Chinese men with  
 Hawaiian women in these rural areas.

### Features of Cultural Kipuka

In sections where neither plantations nor ranches were established, traditional subsistence activities continued to be pursued, undisturbed by modern economic development, until the present. In the wetland areas taro continues to be farmed. Ornamental flowers and some orchard fruits are also cultivated. In the arid areas, sweet potatoes, dryland taro and other traditional and introduced crops suited to the dry soil and climate are cultivated. The undeveloped natural resources in these areas provided an abundance of foods for the native Hawaiians who lived in these districts. Forested lands provide Hawaiians with fruits to eat; vines, plants, and woods for making household implements and tools; and herbs to heal themselves. They provide a natural habitat for animals that are hunted for meat. Marine life flourishes in the streams. The ocean provides an abundance of food. Subsistence activities continue to be the primary source of sustenance for the native Hawaiians as well as local descendants of immigrants who settled in these rural areas. Cultivation, fishing and gathering is oriented as much around home consumption as it is around market production. Rural Hawaiians are not as consumer oriented as urban Hawaiians.

Hawaiians in these districts maintain large extended family networks. The practice of *hanai*, or the raising of adopted children, continues to be commonly practiced. Ties with family who live on another island, especially, O'ahu, continue to be maintained. Although some of the children move away to the city, one or two usually remain behind to care for parents, surviving grandparents, and ancestral *kuleana* lands or Hawaiian homelands. Often those who move away send their children home to be raised by the extended family. Those living in urban areas periodically visit their families in the rural areas.

Hawaiians in these districts continue to trace unbroken lineal descent to the original Hawaiians who settled the district that they live in. They also claim ancestral ties to the *'uhane*, spirits, *'aumakua*, ancestral deities, and other deities of the land itself. These Hawaiians continue to acknowledge the presence of their spiritual ancestors in the surrounding land through the passing on of chants and legends; to respect the land, streams, ponds, and ocean; to make appropriate use of particular place names of the district; and to

retain knowledge of the mythical and historical events with the area.

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One of the primary sources of information about life in these rural districts are oral history interviews with kupuna informants conducted by Mary Kawena Pukui in the early 1960's. When "talking story" with the kupuna, Mrs. Pukui often shared her own ideas, insights, and thoughts about Hawaiian cultural beliefs. Two of her comments, in particular, help to place the information into a cultural and historical context. The first thought explains the importance Hawaiians attach to the traditional knowledge that their parents and grandparents passed on to them through the spoken word:

*"Mamua no ke aloha 'aina e puka iaia na 'olelo no'ea. He aloha ka 'olelo na Hawai'i he i'o ka 'olelo o na kupuna waiho keia hua 'olelo hele aku na makua, ke onei. O na po'e no ia maopopo, malama no. Na po'e ho'omaopopo 'ole, a'ohe lakou e 'ike."*

"It was love for the land that brought forth expressions of wisdom. The words of the Hawaiians were loving, the words of the ancestors held truth. Words with substance. When the ancestors go, they left the words behind them, when parents go the words still remain. Those who understand, keep them. Those people who don't understand, they don't see."<sup>22</sup>

The kupuna who Mrs. Pukui interviewed shared thoughts experiences and feelings which had only been previously shared with family and close friends. These oral traditions lend insight to the viewpoint and interests of those Hawaiians who were content to remain in the isolated rural districts while many others moved out during the first three decades of the twentieth century. For those who stayed behind, life in those districts was filled with interesting natural phenomena and forces which challenged them as they sought out their subsistence needs. They patterned their economic activities around the life cycles of the various fish, animals, and plants that they depended upon for food. Thus, from month to month, as the seasons shifted from wet to dry, their food sources changed in accordance with the type of fish, fruits, and plants that were in season. This knowledge of the environment and natural life forces was often the substance of Hawaiian traditions, beliefs, and practices as the Hawaiians chose to personify the forces of nature and create legends and myths to describe and remember the dynamic patterns of change that they observed. According to Mrs. Pukui:

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<sup>22</sup> Pukui, Mary Kawena during interview with Hattie Yoshikawa. March 28, 1960, Wai'ehu, Maui, #84.01.

"We have not been taught Hawaiian in schools. Attachment #1 - McGregor  
 Hawaiian by our makua and our kupuna. And now they're gone and we are the kupuna today. In the future, the children will not get the same old way of life and they must understand that when they read the books. We must write the books. We must present the Hawaiian side, because sometimes other writers write of us too critically, not understanding our ways. They write too critically of us. They don't understand why we did certain things. But we had a reason to everything we did. And when they write of us as superstitious people - are we? Are they sure we are superstitious? We had a reason for doing things. Sometimes our people couldn't explain, so that the *malihini* would understand. But their explanation suited our own people. You can't eat a certain thing because that's your *'aumakua*. Well when you look for the other side, you can't eat a certain thing because you are allergic. Your system won't accept it."<sup>23</sup>

The folk beliefs and legends shared by the *kupuna* from these districts helped them to understand and adapt to the qualities and character of the landscape in which they lived - the climate, the variations of rain and wind, soil conditions, flora, fauna, and seasonal changes. Such traditional knowledge provided Hawaiian in those districts with the benefit of the accumulated experience of their ancestors in utilizing the natural resources of these areas to their fullest in order to support their families. These beliefs also provided them with a profound sense of identity with the *'aina* as well as responsibility to provide stewardship of the area where which they lived. The degree to which these traditions were believed, respected, and passed on among the families of these districts reflected the degree to which these beliefs were perpetuated and the traditional relationship to ancestral deities of the land accepted.

### Hawaiians' Reliance on the Land

Throughout history, the Hawaiian people have maintained a deep abiding faith in the land and its power of providing physical sustenance, spiritual strength, and political empowerment. "Without the land, we are nothing," is a commonly held belief.<sup>24</sup>

Hawaiians who petitioned King Kamehameha III in 1845 not to sell land to foreigners reflected this viewpoint when they wrote:

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<sup>23</sup> Pukui, Mary Kawena during interview with Dolly Mahalo, Josephine Marciel and Francis Marciel. November 30, 1961. Kaupo, Maui, #86. 03. 1, 2, 3.

<sup>24</sup> Aluli, Noa Emmett, M.D. 1988.

"If, perhaps, the land is covered over and crowded with the dollars or those who purchase land, from Hawaii to Kauai. Ten, perhaps a hundred thousand million. Will most of these dollars be for the land if we agree to its sale? We will not have anything at all to say about this money. Very few indeed will be the dollars in the hands of the true Hawaiians, and in the land. The land strives [*kulia*] for revenue every day. The earth continues to receive its wealth and its distinction every day. There would be no end of worldly goods to the very end of this race. But, the money from the sale of land is quickly ended, by ten years time."<sup>25</sup>

Members of the Aha Hui Pu'uhonua O Na Hawai'i (Hawaiian Protective Association) held the same kind of trust and reliance upon the land when they worked to establish the Hawaiian Home Lands Program in 1920. The following is an excerpt from a memorial that they sent to the U.S. Congress:

"The soil is a redeeming factor in the life of any race, and our plan for the rehabilitation of the Hawaiians is futile unless the question of returning to mother earth takes precedence to all other considerations in such a plan. . . . In so far as experience has proven and as much as science has revealed, physical health and vigor, the power to propagate the race, eradication of diseases, the restoration of normal domestic living conditions, the elimination of poverty and pauperism, the establishment of business relationship with the business world, the deepened appreciation of the soil and of the material wealth, - all of these benefits come, not by the fashionable [*sic*] life of this century, but, by the intimate acquaintance with the life and the possibilities of the soil."<sup>26</sup>

Conversely, the social problems of Hawaiians are attributed to the alienation of Hawaiians from the land. Among scholarly studies on the historical experiences of native Hawaiians is a major school of thought which uses a psychological framework to explain the relatively disadvantaged social status of native Hawaiians in the 20th century. These studies describe a profound feeling of inferiority, powerlessness, despair and loss when the White Anglo Saxon Protestant culture was imposed upon the Hawaiians at different stages in Hawaii's history. Much weight is given to the

<sup>25</sup> Hawai'i State Archives, Legislative Petitions File. June 25, 1845. The translator note says ff, 7/16/73. This may have been translated by the translator employed by the Archives.

<sup>26</sup> Hawai'i State Archives, Delegate Kalaniana'ole file, petitions, "Memorial to Congress" from the Aha Hui Pu'uhonua O Na Hawaii.

psychological trauma Hawaiians experienced when <sup>1</sup> Attachment #1 - McGregor with the Hawaiian culture over interpersonal and family relationships, religion, language, education and land tenure.<sup>27</sup> This trauma, however, was not only psychological. Hawaiians were physically displaced from their ancestral lands and as a result suffered material deprivation when they were thus cut off from their sole means of subsistence. This physical separation from the land also cut them off from their spiritual customs and practices with relation to the land of their ancestors and family deities associated with the land.

The study, E Ola Mau: Native Hawaiian Health Needs Study, Mental Health Task Force Report, completed in 1985, shed new light on the problem and informs our approach to these issues. It attributed a major source of the physical and mental health problems of native Hawaiians to their separation from ancestral lands. Among the report's findings was that:

"In contrast to Western concepts of mental health which frequently separate psychological and somatic functioning, traditional Hawaiian conceptions emphasize the unity of body, mind and spirit. The harmony of these dimensions emerges from a sense of psychic relationship with the land, the sea, and the spiritual world. The present study found that for many Hawaiians, the detachment from traditional beliefs and life styles based on harmonious relationships with nature and the spiritual world has created a felt sense of marginality, helplessness, and alienation. Thus, the present report emphasizes the importance of promoting traditional beliefs and life styles as alternatives to Western ways."<sup>28</sup>

This report was one of the first to recognize that Hawaiians' loss of their lands and access to its abundant resources was at the root of their economic, social and psychological problems. Among the six major recommendations made by the E Ola Mau study are the renewal and perpetuation of Hawaiian values to promote pride, self confidence, and personal power among native Hawaiians; programs to encourage empowerment; and most significantly, "programs to increase the availability

<sup>27</sup> Beaglehole. 1937. Burrows. 1947. D. McNassor and R. Hongo. 1972. Strangers In Their Own Land: Self-Disparagement in Ethnic Hawaiian Youth. Claremont: The Claremont Reading Conference, Claremont Graduate School. Kamehameha Schools/ Bernice Pauahi Bishop Estate 1983. Native Hawaiian Educational Assessment Project Final Report.

<sup>28</sup> Native Hawaiian Health Research Consortium, Mental Health Task Force, Alu Like, Inc. 1985. E Ola Mau: Native Hawaiian Health Needs Study, Mental Health Task Force Report. Honolulu: Native Hawaiian Health Research Consortium, Alu Like, Inc. viii.

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of land to Native Hawaiians since it is from a relations  
all mental and spiritual health flows."<sup>29</sup>

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From 1971 through 1984, the United Nations Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Indigenous Populations conducted a study on indigenous peoples in 37 different countries. The final report reaffirmed that protection of the unique relationship of indigenous peoples to their ancestral lands is central to ending discrimination against them. In part the report concluded:

"It must be understood that, for indigenous populations, land does not represent simply a possession or means of production. It is not a commodity that can be appropriated, but a physical element that must be enjoyed freely. It is also essential to understand the special and profoundly spiritual relationship of indigenous peoples with Mother Earth as basic to their existence and to all their beliefs, customs, traditions and culture. . . . It is also essential to increase understanding of the profound sense of deprivation experienced by indigenous populations when the land to which they, as peoples, have been bound for thousands of years is taken away from them. No one should be permitted to destroy that bond."<sup>30</sup>

The conflict over land - its spiritual nature and sacredness; the stewardship over it; and its use, control and distribution - was at the heart of the cultural conflict between Western society and Hawaiian society. The imposition of a system of private property ownership in combination with a system of capitalist agriculture led to the alienation of a majority of the native Hawaiians from their ancestral lands. Those who left their ancestral lands for work and life in an urban setting, usually Honolulu, gradually set aside Hawaiian tradition, customs and practices. They adapted new ways more suited to their new environment and livelihoods. Those who remained on the land of their ancestors continued to make a living by utilizing the traditional knowledge of their environment and its changing moods and resources at different times of the year.

After a decade of unprecedented economic development following statehood, the existence of these rural strongholds gained new significance to

<sup>29</sup> Native Hawaiian Health Research Consortium, Mental Health Task Force, Alu Like, Inc. 1985. xi and xii.

<sup>30</sup> United Nations, Subcommission on Prevention of Discrimination and Protection of Minorities Working Group on Indigenous Populations. Cobo, Jose R. Martinez. 1987. Study of the Problem of Discrimination Against Indigenous Populations, Volumes I - V. New York: United Nations. 39 points 509 and 510.

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Hawaiians who sought to perpetuate and revitalize culture. They found the people in those communities, particularly the *kupuna*, elders, to be untapped wellsprings of knowledge about traditional Hawaiian customs, beliefs and practices. Historic cultural and sacred sites in the rural districts had escaped destruction because the lands were too marginal for agricultural development. Contemporary excavations of those sites in conjunction with oral history interviews with *kupuna* from those areas yielded important new information about the earliest periods of Hawaiian society in the islands.

On Moloka'i; in Ke'anae, Hana, and Mākena on Maui; Kaho'olawe; Ka'u, Puna and Miloli'i on Hawai'i, and Waipā on Kaua'i, contemporary young Hawaiians began to work with *kupuna* to protect the natural and cultural resources of those areas for future generations. They advocated community-based economic development that would respect the land and maintain the traditional stewardship and spiritual relationship of Hawaiians to the 'aumakua and *akua*, deities and gods of these areas.

### Native Hawaiian Public Land Bases

Partial recognition of the rights of *Ka Po'e Hawai'i* to the Crown and government lands of the Hawaiian Kingdom were acknowledged by the U.S. government in the creation of two public land bases set aside for Hawaiians of half Hawaiian ancestry of more - 200,000 acres of Hawaiian Home Lands; and at least one-fifth of the 1.8 million acres of ceded public lands. However the Hawaiian people do not exercise sovereign control over these land bases, as control was vested in the State of Hawai'i under the 1959 Admissions Act. Both land bases continue to be reduced and damaged through land exchanges, non-Hawaiian leases for commercial and industrial uses, and military training and storage usage.

The Hawaiian Home Lands is administered as a regular department of the State of Hawai'i, having to conform to state budget policies and economic planning priorities. In 1980, there were 21,000 persons of half Hawaiian ancestry on the waiting list for an allotment of land. Some of the applicants had been on the waiting list for twenty to thirty years. Despite such a long waiting list, a significant portion of the Hawaiian Home Lands is leased to non-Hawaiian ranches and commercial enterprises, to generate revenues for the department. The State of Hawai'i has periodically utilized Hawaiian Home Lands for public facilities such as airports, schools, rubbish dumps, small boat harbors and parks without compensating the trust with money or

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with land.<sup>31</sup> The homesteaders on Hawaiian Home infrastructure for irrigation, soil conservation and the marketing of crops.

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The unique and special rights of native Hawaiians in the remaining Crown and Kingdom lands which had been ceded to the United States were recognized by the U.S. government in the 1959 Admissions Act under which Hawai'i became a state. These lands were turned over to the State of Hawai'i to manage as a public lands trust on behalf of the general public and the native Hawaiians, as follows:

"For the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use."<sup>32</sup>

The 1978 Hawai'i State Constitutional Convention acknowledged the special interest of native Hawaiians in the ceded public lands trust by designating one-fifth of the annual revenues generated from the ceded lands to be set aside to fund programs for native Hawaiians of half Hawaiian ancestry or more. It created an Office of Hawaiian Affairs to administer those funds and to advocate for native Hawaiian interests. The operations of that office are funded by the legislature on an annual basis. A board of trustees chosen in a special election in which only Hawaiians vote sets the policies and hires the administrator for the Office of Hawaiian Affairs. However, the former Crown and Kingdom lands as a whole are managed by the Department of Land and Natural Resources of the State of Hawai'i. It allows this land base to be used and, in certain cases, undermined by private enterprise.<sup>33</sup>

<sup>31</sup> These problems were identified in Federal-State Task Force On the Hawaiian Homes Commission Act. 1983. Report to United States Secretary of the Interior and the Governor of the State of Hawaii. Honolulu.

<sup>32</sup> The Admission Act, An Act to Provide for the Admission of the State of Hawaii into the Union, Section 5 (f). See Hawaii Revised Statutes. 1985. Volume I. 88.

<sup>33</sup> For example, the State of Hawai'i recently exchanged 27,785 acres of ceded lands on the Island of Hawai'i for 25,807 acres of land owned by a private estate to enable it to develop geothermal energy wells in Puna. Not only did the public land trust lose 2,000 acres in the exchange, but the land which the state received in return for the pristine natural rainforest that it gave away included 1,200 acres that had been logged for wood chips and 12,000 acres of land covered over by recent lava flows. Moreover, geothermal energy development will tap into the body and life force of the Hawaiian deity of the volcano, Pele, violating the spiritual beliefs of native Hawaiian religious practitioners. In addition, native Hawaiians who exercised their traditional gathering rights in the public forest were denied access to the forest

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Unless and until *Ka Po'e Hawai'i* have sovereign control over these land bases, they will not be able to enjoy the full benefit of the resources of those lands and be able to utilize them for the betterment of their people. In addition, no land base has ever been set aside for Hawaiians of less than 50 percent Hawaiian ancestry. These land claims must also be addressed.

In 1992, Native Hawaiians who sought recognition of political sovereignty, assert that control over the public land bases over which Hawaiians already have a recognized claim would provide a means for healing the serious social problems that Hawaiians face in the 1990s. In their grant application submitted to the Administration for Native Americans to conduct workshops on Hawaiian sovereignty 30 Hawaiian organizations, agencies, and institutions reiterated the traditional Hawaiian belief in the importance of uniting the Hawaiian people with their ancestral lands. In part the grant read:

"There is a general consensus among *Na Kanaka Maoli* that if we are able to re-establish cultural, social, economic, and political self-governance over our affairs and common (trust) assets as a native people; if we are able to get back all or a portion of the 1.75 million acres of land and related natural resource entitlements that were taken away; if we are able to get fair compensation for all or a portion of the value of the uncompensated use of these lands for nearly a century by the federal and state governments; if we are able to get restitution for the denial of our exercise of sovereign rights; we could begin to lay the foundation for reinstating the sovereignty and self-determination of *Na Kanaka Maoli*."

Thus, Hawaiians today, like their ancestors continue to rely upon the healing and nurturing qualities of the land for the perpetuation of their families and their nation. Hawaiians persistence on the land is at the heart of the perpetuation of a distinct and unique Hawaiian culture and identity.

### Locations of Cultural Kipuka

In distinguishing the rural areas of importance to the perpetuation of the Hawaiian cultural, we have developed three categories.

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when the land came under private ownership. See Kaolelo Lambert John Ulaleo, et al vs. William Paty, et al, Civil No. 88-00320 ACK, U.S. District Circuit for the District of Hawai'i.

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The first category are those areas with stronger continuity and which are imminently threatened by proposed development. Attachment #1 - McGregor  
These areas include:

Hāna district, from Ha'ikū to Kahikinui on Maui  
Miloli'i fishing village in South Kona on Hawai'i  
Portions of the Ka'u district on Hawai'i  
Puna/Kalapana district on Hawai'i  
Kohanaiki/Kaloko in Kona on Hawai'i  
Kahana on O'ahu  
Waiahole on O'ahu  
Waikāne on O'ahu  
Moloka'i Island

The second category are those areas with potential for re-establishment of cultural continuity and need immediate attention to protect their natural and cultural resources. These areas include:

The island of Kaho'olawe  
The island of Lana'i.

The third category are those areas of strong cultural continuity which need to be closely monitored and supported. These areas include:

Anahola on Kaua'i  
Kekaha/Waimea on Kaua'i  
Waipā on Kaua'i  
Kahakuloa on Maui  
Keaukaha-Pana'ewa on Hawai'i  
King's Landing on Hawai'i  
Kualoa on O'ahu  
La'ie on O'ahu  
Wai'anae Coast of O'ahu  
Waimanalo on O'ahu

### Protecting Cultural *Kipuka* From Negative Impacts

Negative impacts upon Native Hawaiian rural communities and their natural resources are becoming increasingly intense and severe. Golf course run-off affect fishing and other marine resources relied upon for subsistence. Subsistence hunting areas are diminishing. Access to forest and mountain areas for gathering of native plants for medicine are being cut off. The loss of subsistence gathering opportunities has disrupted the mutual sharing and

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exchange that is an integral part of 'ohana, extended rural communities.

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Customary management and stewardship over the natural, cultural and economic resources in these rural areas is threatened by new owners from outside Hawai'i with commercial, industrial or resort plans. This contributes to demoralization, fragmentation and/or polarization in these formerly cohesive cultural enclaves.

A number of these rural Hawaiian communities threatened with development have organized to protect their landholdings and the surrounding natural resources in their districts from the assault of proposed tourist, commercial and industrial development. On the island of Hawai'i, Ka'u Hawaiians formed the Ka 'Ohana O KaLae to protect the natural and cultural resources of their district from a planned spaceport to launch missiles. Malama Ka 'Aina Hana Ka 'Aina are Hawaiians who settled on Hawaiian Home Lands at King's Landing, outside of Hilo, Hawai'i. They seek to have the area designated for subsistence homesteading and to be granted leases under such a program. The Pele Defense Fund is working to stop the development of geothermal energy wells and electric plants which will violate the god Pele, destroy the unique Puna rainforest, and ruin the natural resources that the Puna residents have utilized for subsistence livelihoods. On Moloka'i, the Hui Ala Loa, Ka Leo O Mana'e, and Hui Ho'opakela 'Aina are community groups formed to protect the natural and cultural resources of Moloka'i for farming and fishing rather than for tourist resort development. On Maui, the Hui Ala Nui O Makena works to keep access to the ocean open for traditional fishing and gathering as well as recreation; Hana Pohaku is developing community-based economic development on their *kuleana* lands; and the Ke'anae Community Association works to keep the water flowing to their taro patches rather than being diverted for development in Kula and Kihei or hydro-electric plants. The Hawaiian Farmers of Hanalei have community-based projects at Waipa, Kaua'i and Ka Wai Ola seeks to protect the shoreline of Hanalei from ruin by numerous tour boat operations. On O'ahu, community based economic development projects are being pursued on the Wai'anae Coast by Ka'ala Farms, the Ope'lu Project and Na Hoa'aina O Makaha. The Protect Kaho'olawe 'Ohana with members from every island, continues its work to permanently stop U.S. military use of Kaho'olawe so that the religious, cultural, and natural resources of the island can be restored and the island can become a Hawaiian culture learning center. Malama I Na Kupuna O Hawai'i Nei, a statewide group, seeks to prevent the disturbance of traditional Hawaiian burials.<sup>34</sup>

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<sup>34</sup> A comprehensive list of Native Hawaiian Community struggles is included as Appendix B.

All of these efforts, combined, are contributing to the Hawaiian people, land, cultural base, language and spiritual beliefs. There is a sense of urgency to these endeavors and a conviction to persevere despite opposition and obstacles that are placed before them.

### Rural Resources Important to Cultural Perpetuation

Among the natural resources which are important to traditional Hawaiian customs, beliefs, and practices for cultural, religious and subsistence purposes in rural areas are:

1. *wahi pana*, sacred sites, and historical sites - *heiau*, shrines, burials, terraces, house sites, etc.;
2. streams for taro cultivation, marine resources, and domestic water;
3. shorelines, reefs, and ocean for gathering of foods, medicine and spiritual customs;
4. forests for hunting, gathering of medicines, foods, ceremonial uses for hula adornment or ritual offerings, and spiritual customs;
5. habitats for endangered native species of plants and animals;
6. natural and cultural areas as traditional domains of ancestral spirits and Hawaiian and deities where Hawaiians renew their ties to ancestors through experiencing natural phenomena and witnessing *ho'ailona*, signs.<sup>35</sup>

Hawaiians have legal standing to access these resources, whether they are located on public or private lands.

Article XII of the Hawai'i State Constitution deals with Hawaiian Affairs. Section 7 states:

"The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by *ahupua'a* tenants who are

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<sup>35</sup> McGregor, Davianna. April 8, 1991. "Testimony of the Pele Defense Fund Before the Public Utilities Commission of the State of Hawai'i in the Matter of Instituting a Proceeding to Require Energy Utilities in Hawai'i to Implement Integrated Resource Planning," Docket No. 6617.

descendants of native Hawaiians who : Attachment #1 - McGregor  
 Islands prior to 1778, subject to the right of the State to regulate  
 such rights."

The Hawai'i Revised Statutes, Chapter 7-1 defines rights of the people which were established in 1850 when Kuleana Act granted private property parcels to the common people. It reads as follows:

"Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, *aho* cord, thatch, or *ki* leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use."

Chapter 174C - 101 of the Hawai'i Revised Statutes deals with conservation and resources. Part (c) reads as follows:

"(c) Traditional and customary rights of *ahupua'a* tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own *kuleana* and the gathering of *hikiwai*, *ōpae*, *o'opu*, *limu*, thatch, *ki* leaf, *aho* cord, and medicinal plants for subsistence, cultural and religious purposes."

Thus, the government of the State of Hawai'i is mandated, under its own constitution and several state statutes to protect and preserve the Native Hawaiian culture and land base. At the same time the state government is also mandated to provide for the general welfare and well-being of the general public. As the base of natural resources in Hawai'i shrinks with increased development, the social and political conflicts over whether these resources should be protected or destroyed intensify and pose new challenges to policy makers.

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## The Challenge

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The central question that arises for those who live in Hawai'i is if modern Hawaiian society can be restructured to tolerate the existence of small subsistence rural communities, or if the existing social structure will continue to destroy and absorb these rural areas for commercial and industrial development. Rural Hawaiians are not demanding that everyone should give up modern conveniences and live a subsistence lifestyle. They are saying that Hawaiians should be given the right to continue to pursue a way of life passed on to them by generations before and which is crucial to the survival of Hawaiian culture. Those people who want to pursue a modern, Western way of life should not interfere with or infringe upon the Hawaiian way of life which was established upon the lands of these rural districts for centuries. Those who are residents of the districts and want to live in accordance with a more modern Western lifestyle should move away. Those who are not residents should not be allowed to destroy the natural resources which are essential to the survival and subsistence of the resident Hawaiians of these districts.

In the final analysis it is up to the present generation of Hawaiians and non-Hawaiians in Hawai'i to determine if Hawai'i's cultural and natural resources, particularly in the rural communities, will be protected so that the Hawaiian culture can be perpetuated for future generations.

Our study of rural Hawaiian communities is an attempt to involve government agencies, beginning with the Department of Health and the Environmental Protection Agency in a program of protection of cultural *kipuka*. In this first phase we identify key aspects of traditional Hawaiian subsistence, cultural, and spiritual customs, beliefs, and practices to be monitored and protected from risk factors.

We begin with an assessment of rural Hawaiian communities and follow with an assessment of family patterns and life.

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Governor's  
Moloka'i Subsistence  
Task Force  
Final Report

June 1994

Honolulu Hawai'i



Governor's  
Moloka'i Subsistence  
Task Force  
Final Report

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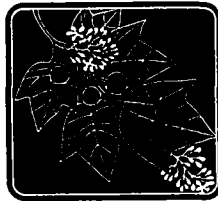
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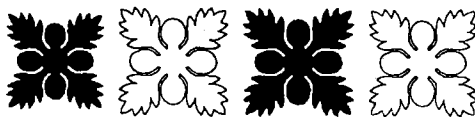
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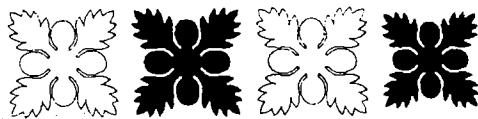
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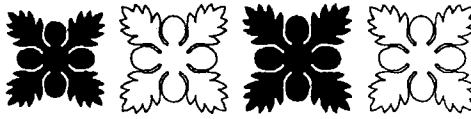


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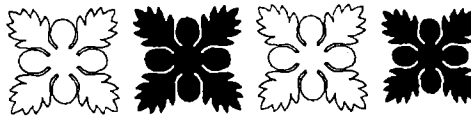




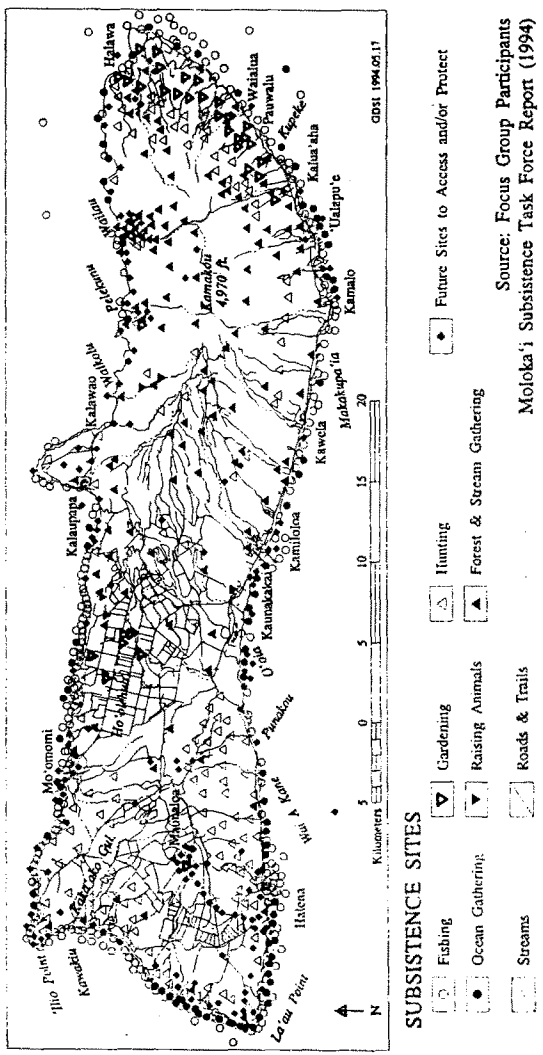
## Executive Summary

*On Moloka'i, subsistence is the customary and traditional uses by Moloka'i residents of wild and cultivated renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, transportation, culture, religion, and medicine; for barter, or sharing, for personal or family consumption and for customary trade.*

**Governor's Task Force On Moloka'i Fishpond Restoration, 1993.**



**Moloka'i Subsistence Task Force: Final Report - June 1994**



Molokai Subsistence Task Force: Final Report - June 1994

## Background

In February 1993, Governor John Waihee appointed the Moloka'i Subsistence Task Force to document how important subsistence is to Moloka'i families and how much of the families' food comes from subsistence. The task force was also asked to determine the problems which were making it harder to do subsistence fishing, hunting, and gathering on Moloka'i and to recommend policies and programs to improve the situation. The definition of subsistence at the beginning of this section was adopted by the Governor's Moloka'i Subsistence Task Force for the purposes of this study.

Traditionally, Moloka'i, with its extensive protected reefs and fishponds gained the reputation of a land of "fat fish and kukui nut relish." Moloka'i Hawaiians obtained marine resources from the shallow offshore reefs; the deep sea channels between Moloka'i and Maui, O'ahu, and Lana'i (Pailolo, Kaiwi, and Kalohi); the deeper ocean off of the island's north shore; and from an extensive network of human constructed fishponds.

Over the years, a number of activities contributed to the degradation of the natural environment of Moloka'i. Offshore reefs and oceans were impacted by pollution, erosion and soil run off from tourist, residential development, and ranching. Sand from the West End of Moloka'i was mined and shipped to O'ahu to make cement to build the freeways and hotels and to replace loss sand at Waikiki Beach. Gravel and rocks from East Moloka'i were used in freeway construction on O'ahu. Ranching on the East End contributed to deforestation, erosion and runoff. Once productive fishponds were allowed to fill with silt and the walls fall to disrepair following tsunamis and storms. Over-harvesting of marine resources relied upon for subsistence is a growing problem. Traditional resources such as the turtle cannot be used for subsistence under new federal regulations. Wildlife such as deer, goats, pigs, and birds are abundant on privately owned lands but are too scarce to be hunted on public lands.

In 1987 the last pineapple company closed its operations. In that same year, a tuberculosis epidemic led to the decision to eradicate all the cattle on Moloka'i. Moloka'i General Hospital phased down its operations, stopping all maternity deliveries. Moloka'i's unemployment rate was three times the state's average at nearly 20%. Many small businesses shut down. Subsistence fishing, hunting, gathering, and cultivation provided a reliable means of support for the community during the rough economic times.

Many families on Moloka'i, particularly Hawaiian families, continue to rely upon subsistence fishing, hunting, gathering, or cultivation for a significant portion of their food. Availability of the natural resources needed for subsistence is essential to Moloka'i households where the unemployment rate is consistently higher than

on other islands and a significant portion of the population depend upon public assistance.

Subsistence has also been critical to the persistence of traditional Hawaiian cultural values, customs, and practices. Cultural knowledge, such as about place names; fishing ko'a; methods of fishing and gathering; or the reproductive cycles of marine and land resources have been passed down from one generation to the next through training in subsistence skills. The sharing of foods gathered through subsistence activities has continued to reinforce good relations among members of extended families and with neighbors.

### **Goals, Objectives, Research Activities, Final Product**

The investigators employed a variety of data collection techniques to provide documentation for the policy recommendations. The quantitative technique of a random sample survey was conducted in order to gain a broad picture of behaviors and attitudes regarding subsistence practices on Moloka'i. The qualitative techniques of focus groups and mapping was used to gather detailed descriptive information regarding subsistence beliefs, methods, and issues. Data is available across a quantitative-qualitative continuum which is useful for cross-referencing of results and identifying any variations.

### **Results of the Random Sample Survey**

The survey and focus groups confirmed that Moloka'i continues to be a rural island where subsistence is one of the basic economic activities:

- Among the random sample group surveyed across the entire island, 28% of their food is acquired through subsistence activities.
- Among the Hawaiian families surveyed, 38% of their food is acquired through subsistence activities.
- Among the respondents, 76% ranked subsistence as very important and somewhat important to their own families.
- Respondents reported receiving food acquired through subsistence activities approximately once a week.
- Virtually every respondent believed that subsistence was important to the lifestyle of Moloka'i.

The three major problems identified were:

- Off-island people who take too much
- Taking of undersized juveniles
- Lack of access

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The map at the beginning of this section was generated by subsistence practitioners who participated in focus groups. It graphically shows that a full range of subsistence activities are conducted throughout the island. There is a mix of activities in each of the major districts of the island. Perhaps, for this reason, subsistence practitioners envisioned reviving, district-by-district the traditional community-based ahupua'a management approach.

The prevalence of subsistence on Moloka'i was reflected in the amount of food that was derived from these practices and feelings about its overall importance to families. The fact that families were highly dependent on subsistence for survival, especially Hawaiians, points to the value of subsistence as a sector of the economy. This dependency on subsistence resources is even more paramount when examined against the backdrop of relatively low income levels on Moloka'i. Close to half of the sample made less than \$20,000 annually. This low monetary amount has implications for purchasing power, diet, recreation, and family and community dynamics.

Without subsistence as a major means for providing food, Moloka'i families would be in a dire situation. Subsistence provides families with the essential resources that compensates for low incomes and a means for obtaining food items that may be prohibitively costly under a strict cash economy. Food items like fish, limu, and deer meat which are normally obtained through subsistence are generally unavailable or are very costly in stores. If families on fixed incomes were required to purchase these items, they would probably opt for cheaper, less healthy foods that would predispose them to disease and other health problems. In this respect, subsistence not only provides food, it also ensures for a healthy diet that is critical to the prevention of disease.

Subsistence generally requires a great amount of physical exertion (e.g., fishing, diving, hunting) that burns calories and improves aerobic functioning. It provides a valuable form of exercise and stress reduction that contributes to positive health and mental health. Subsistence also requires a lot of time. Those who engage regularly in subsistence are less prone to the types of problems that afflicts those who are at a loss for meaningful activities. The lack of activities is often correlated with lethargy, boredom, or other conditions that contribute to obesity, substance abuse, etc.

According to the results of our study, subsistence is analogous to recreation for a majority of respondents. It is a form of recreation that, once all of the essential equipment is obtained or made (e.g. fishing tackle, diving gear), is relatively inexpensive. And unlike most other forms of recreation that are costly every time they are engaged in (e.g., golf green fees) and intended to provide a sense of psychological fulfillment, subsistence has economic and cultural benefits as well.

Beyond the immediate economic and health advantages that come with subsistence are other qualities that serve to enhance family and community cohesion and perpetuate culture and spirituality. Subsistence is an activity that provides prescribed roles for its members. Family members of all ages feel that they contribute to family welfare through their involvement in subsistence. Subsistence activities are a central part of camping trips or family outings and parents and children alike are involved in catching fish and gathering marine resources. Older children are oriented towards subsistence by their elders who teach them about techniques and the behaviors of various species.

On another level, subsistence provides a basis for sharing and gift-giving within the community. Residents generally ascribe to a process of reciprocity and sharing with those who are unable to obtain resources on their own. Families and neighbors exchange resources when they are abundant and available, and the elderly are often the beneficiaries of resources shared by younger, more able-bodied practitioners. Some practitioners believe that they must share their catch with others even when it is meager, because generosity is rewarded by better luck in the future.

Resources obtained through subsistence are used for a variety of special occasions that bond families and communities. Resources such as fish, limu 'opihi, deer meat, etc. are foods served at birthdays, lu'au, graduations, and holiday celebrations. 'Ohana and community residents participate in these affairs that cultivate a sense of communal identity and enhance social networks.

Time spent in nature cultivates a strong sense of environmental kinship that is the foundation to Hawaiian spirituality. Subsistence practitioners commune with nature, honor the deities that represent natural elements and life forces, learn how to malama or take care of the land, and develop an understanding about patterns and habits of flora and fauna.

While traversing the land, practitioners also become knowledgeable about the landscape, place names and meanings, ancient sites, and areas where rare and endangered species of flora and fauna exist. This knowledge is critical to the preservation of natural and cultural landscapes because they provide the critical link between the past and the present. For example, wahi pana or sacred sites that are referred to in ancient chants and legends are often lost amidst changes due to modernization. The identification or rediscovery of these sites provides a continuity that is critical to the survival and perpetuation of Hawaiian culture.

An inherent aspect of traditional subsistence is the practice of conservation. Traditional subsistence practitioners are governed by particular codes of conduct that are intended to ensure for the future availability of natural resources. Rules that guide behavior are often tied to spiritual beliefs concerning respect for the 'aina, the

virtues of sharing and not taking too much, and a holistic perspective of organisms and ecosystems that emphasizes balance and coexistence.

The finding that younger age cohorts were more involved in subsistence and related practices than older people is not surprising given that the former group is more physically active and generally has more dependents to feed and care for. This finding may also reflect a resurgence or renewed interest in traditional Hawaiian practices among younger people. Men were more involved in various types of subsistence than women. This result reflects gender role variations for particular activities. Traditionally, activities such as fishing and hunting were done by men. The fact that men continue to dominate these activities points the continuation of certain traditions.

Hawaiians engaged in subsistence and related practices more than other ethnic groups. This finding reflects the importance of subsistence to this group and the perpetuation of culture through subsistence activities. As mentioned previously, subsistence also plays an important economic role, and this may be especially true for Hawaiians who generally have lower incomes. The fact that Hawaiians engage more in subsistence than others also points to how these activities are embedded in the culture and can be explained through a history of adaptation, the development of an indigenous economy, and the maintenance of cultural traditions despite the influx of foreign lifeways. It is important to note that the other groups (e.g. Filipinos, Japanese) engaged in subsistence, although not at the same level as Hawaiians.<sup>1</sup>

Those born and raised on Moloka'i had higher rates of subsistence and related activities than those from other places. This can be explained by the unique subculture of Moloka'i that is manifested through its lifestyle and socialization practices that encourage subsistence. Those born and raised elsewhere are not exposed to the same socialization experiences, especially if they come from urban environments on the mainland and elsewhere. Subsistence may not be a part of their growing up because it wasn't stressed within their culture and resources were not available.

The same process holds true for long-time residents. Whether a function of age, generation, or exposure over time, the longer one lives on Moloka'i, the more likely they are to engage in subsistence.

Finally, married people with large families (households) engaged in subsistence more than single people or those with smaller families. This again points to the economic benefits derived from subsistence, especially in family

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<sup>1</sup> Some groups may also be concentrated in certain demographic categories that explains their lower subsistence levels. For example, Caucasians on Moloka'i tend to be an older, retired population which may serve to explain why they don't engage in subsistence as much.

situations where there are many people to feed. Larger families or 'ohana may also possess more traditional values than smaller families because they reflect a traditional structure comprised of multiple generations. Thus, they are more inclined to engage in subsistence. Smaller families tend to be nuclear, reflecting a physical separation from parents or grandparents who are a crucial element to the perpetuation of cultural values. Smaller families may also be comprised of older members whose children have migrated to other locations.

### **Subsistence Trends and Issues**

Focus group discussions with subsistence practitioners on Moloka'i revealed that subsistence is vital to families throughout the island, for economic, cultural, and social reasons. While subsistence is widespread and actively practiced, there is a growing concern on the island that mounting pressures are leading to overharvesting that will ultimately wipe out the natural resources which the community relies upon for subsistence. At the heart of the matter is recognition of and conforming with traditional Hawaiian subsistence values, customs, methods and practices. The primary reason why Moloka'i has the natural resources it needs for subsistence still in tact is because previous generations of subsistence practitioners lived in accordance with 'ohana values of sharing and respect and faithfully followed traditional and customary practices and kapu (rules of conduct).

The present generation of subsistence practitioners are faced with new challenges and problems from tourism, commercialism, and newcomers who are ignorant of Hawaiian subsistence value, customs, and practices. Hawaiian practices that were customarily passed down from one generation to the next are being set aside in light of increasing competition from off-island fishermen and hunters and new residents from continental U.S. and the Philippines. There is a growing feeling that if you don't take everything when you see it, then someone will take it before you come back the next time. Thus, rather than taking only what is needed, more is harvested . . . and sometimes wasted. The widespread use of large freezers has also contributed to overharvesting. Before, the ocean was "the icebox" and one only gathered enough for the 'ohana and close neighbors and kupuna to eat. Now subsistence practitioners gather more than what their family can immediately eat and the surplus is stored in freezers.

Many of those who have not been trained by kupuna in subsistence skills are using improper methods to harvest. For example, limu beds are disappearing because people are pulling it up from its roots, rather than plucking it. Traditional Hawaiian practice which dictated that only mature resources be gathered and that the reproductive cycles be respected are not honored by newcomers. Thus juvenile marine life is being harvested. Fish, squid, and lobster are being harvested during their spawning season when they congregate together near to the shore and are easier to catch. Moemoe nets, gill nets and lobster nets are indiscriminately trapping



any marine life and some areas are fished out, such as between Kaunakakai and Makakupa'ia. In hunting deer, the mentality of going after the trophy rather than going to get food for family and neighbors has reduced the herd count. Night poaching of deer poses a danger to public safety and has contributed to wasting of carcasses. Soaring prices for 'opihi in markets and catering businesses on O'ahu, where the 'opihi has been wiped out, is leading to increased harvesting of 'opihi for commercial sale. For example, in 1993, all the 'opihi from Kalaupapa to Hālawā was wiped out in 7 days of the zero tides in March and April. There was no 'opihi to be gathered during the summer. 'Opihi on the West End is gone. Off island boats take massive quantities of 'opihi from Dixie to the Northwest side. The severest enforcement problem is on the backside, particularly with regard to the moi fishing grounds.

Certainly, the natural resources of Moloka'i and its surrounding waters are still sufficient to support both subsistence and commercial harvesting. Otherwise, subsistence practices would not be as widespread and successful as they currently are. However, the resources are not as abundant as adult subsistence practitioners remember them to be when they were growing up. Moloka'i subsistence practitioners have arrived at a crucial juncture. There is increasing concern that if something is not done now to reverse the trend of overharvesting and diminishing resources, there will be nothing left for future generations. Key to restoring a balance between subsistence harvesting and diminishing natural resources will be the community wide acceptance of traditional Hawaiian subsistence values and practices. These need to be taught, understood, accepted, and practiced by everyone who engages in subsistence hunting, fishing, and gathering, on Moloka'i no matter what their ethnic ancestry may be.

There needs to be a commitment by everyone in the community to manage the natural resources of Moloka'i not just to benefit the current generation, but for the well-being of six and seven generations into the future. This commitment can be secured primarily through educational programs which will provide training in proper methods of harvesting subsistence resources and try to inspire acceptance of the traditional values of caring for and nurturing the land and the ocean. Education should be disseminated through the Moloka'i schools; Department of Land and Natural Resources education initiatives, including the hunter education classes, brochures and public information media of the Division of Aquatic Resources, and community organizations.

New fishing rules and regulations and community-based management of natural resources will also be important for immediately curbing trends in overharvesting. The Department of Land and Natural Resources will need to moderately increase the number of enforcement officers assigned to Moloka'i, preferably from the local community. However, government enforcement is not seen as a solution to better management of the island's resources. Subsistence and commercial users need to take responsibility for their own actions. Volunteers, peer

pressure, and community-based resource managers can more effectively promote the proper utilization of resources.

Restocking will also be an important component to sustaining subsistence resources on the island. Natural hatcheries, such as at Mo'omomi and Kawa'aloa Bays and along the South shore need to be protected as sanctuaries for the fish to breed. The Department of Land and Natural Resources should streamline the permitting process for community-based economic development groups to reopen the traditional fishponds which are now part of the ceded public lands trust. Hatchery programs should be attracted to foster the propagation of marine life in the fishponds and in selected bays around Moloka'i.

The other major area of concern to subsistence practitioners on the island is the provision of customary access to all parts of the island. Moloka'i people, from young to old, want to have access to all areas of the island, if not by vehicle, then at least by foot. Of particular concern are areas of Moloka'i Ranch that were formerly open under the pineapple company but have since been closed by the new landowners. It would be acceptable to have access regulated by the use of permits and keys. Limiting access to certain areas of the island to foot trails would also serve to limit the amount of resources which can be harvested. A relationship of mutual trust and responsibility can evolve over the next period for both use and management of the resources of Moloka'i, particularly in the Ahupua'a of Kaluako'i.

In summary, subsistence on Moloka'i will continue to be essential to the lifestyle of the people. Community-based management of the resources, rooted in traditional values of aloha 'aina and malama 'aina and empowered with the responsibility for monitoring of the resources will be critical in assuring a subsistence lifestyle for future generations on Moloka'i. The other major facet to the perpetuation of subsistence activities and the protection of the necessary natural resources will be the recognition of subsistence as an essential and viable sector of the overall economy and balancing future economic development and growth on the island to assure its continuation.

#### **Subsistence as a Sustainable Sector of Moloka'i's Economy**

A primary reason for the continuation of subsistence practices on Moloka'i has been the continued availability of renewable natural resources. In turn, while years of macroeconomic strategies have wreaked havoc on Hawai'i's natural environment and endemic species of flora and fauna in urban areas and on plantations, subsistence practices have allowed the natural resources in rural communities like on Moloka'i to persist.

Despite how resilient subsistence on Moloka'i has been up to this point, a key concern among focus group participants was how long subsistence practices could be maintained in the face of diminishing returns. Unless drastic and decisive measures are undertaken to protect habitats and the critical mass of species required for regeneration, future generations may not be able to engage in subsistence practices for lack of adequate returns. That is, the amount of resources obtained will not be worth the amount of effort exerted.

A key dimension to the theory of sustainable development is how to offset environmental degradation through preservation. This dimension is germane to our understanding of the issues that surround the Moloka'i Subsistence Task Force. Although Moloka'i's population has remained static over time, burgeoning neighboring island populations have resulted in intense competition over resources that are considered to be rightfully those of Moloka'i residents. Because of overharvesting and resource depletion in places like O'ahu and Maui, subsistence and commercial harvesters have sought to exploit the more abundant resources of Moloka'i. Problems have occurred because of conflicting views about territoriality and tenant's rights, perceived threats to Hawaiian traditions by greedy users who take too much, more efficient technologies (e.g. faster boats) that have overwhelmed natural carrying capacities, etc.

The most common concern among those who are identified as traditional practitioners is that current trends will impair the future productive capabilities of the 'aina. The natural equilibrium that is based on rates of "take" and replenishment has been disturbed by heightened competition over resources and environmental degradation. This seriously reduces the opportunity for future generations to partake in the traditional activities that are believed to be at the basis of Hawaiian well-being.

Beyond the direct resource and material rewards resulting from a subsistence economy are cultural benefits that are critical to community and family well-being. A subsistence economy emphasizes sharing and redistribution of resources which creates a social environment that cultivates community and kinship ties, emotional interdependency and support, prescribed roles for youth, and care for the elderly. Emphasis is placed on social stability rather than individual efforts aimed at income generating activities. We found in our study that large families were more dependent than smaller families on subsistence resources and all members who were old enough played a role in gathering resources. When a resource was caught or gathered in large quantities during certain seasons, it was common practice to share with 'ohana or community members. The kupuna or elderly were especially reliant upon the process of sharing and exchange because many were not able to engage in strenuous physical activities associated with subsistence. In their earlier years, they were benefactors in this same process. Subsistence, as a process of sustainable development, is a value-laden economic system that places emphasis on social relations over exponential growth rates.

**Moloka'i Subsistence Task Force: Final Report - June 1994**

Given all of these factors, subsistence has been a viable sector of the economy that has continued to function along side the sugar and pineapple plantations and the ranches. Hawaiian extended families commonly supplemented their incomes with subsistence fishing and hunting. Unfortunately, subsistence is generally not recognized as a bonified economic sector by western economists. In the face of economic decline in Hawai'i, such as with the phasing out of agribusiness, decisions are generally made that promote new economic development that is based on a linear process towards capital accumulation. This usually comes in the form of tourism.

Subsistence is usually not assessed in terms of how it will be impacted or considered as a viable alternative that will at least partially compensate for the loss of jobs and revenues. The impact of tourism and related commercial activities on subsistence is not seriously factored in as an economic or social cost. The most common trend that is supported by government and labor unions is to find quick replacements to plantation closings. Thus, little is known about how communities fare when left to their own devices in the aftermath of a failed economy. What is not taken into account in the decision-making process is peoples' staying power or their commitment to a place to which they often have genealogical ties, cultural heritage, and their willingness to try alternative approaches to achieving sustainability.

Moloka'i provides a rare example of how residents adapted to changing economic circumstances without massive external intervention. Historical accounts have indicated that when agribusiness closed on Moloka'i, subsistence became a more vital aspect of the economy.<sup>2</sup> Through community-based efforts, residents organized to successfully stave-off tourism development while promoting values related to community and family integrity. Subsistence and other community-based endeavors are considered the forces that bind together the social elements necessary for cultural perpetuation. Subsistence should not be viewed as a replacement economy per se, but as a tradition that has survived after macroeconomic strategies (i.e., plantations, ranches) failed.

Whatever economic recovery strategy is selected, it should allow for subsistence to continue to play a significant role. This is especially critical on Moloka'i where natural resources are available and subsistence is an integral part of lifestyle. Community planning is a proactive strategy that should encourage a functional coexistence and balance between subsistence, the market economy, and government.

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<sup>2</sup> Informants reported that subsistence rates increased after the closure of Del Monte, yet because there are no baseline measures, this belief cannot be empirically verified.

**Action Plan**

There are six components to the proposed action plan for implementation. The Task Force initiated some of the programs in 1993-94. The components include the following:

- Ongoing negotiations with Moloka'i Ranch regarding access
- Establishing the Mo'omomi Subsistence Fishing Area
- Educational programs
- Amendments to Hawai'i Fishing Regulations
- Endorsement of homesteader management of Hawaiian Homes hunting grounds
- Appointment of a Moloka'i Subsistence Advisory Committee



**McGregor / August 30, 2000**

**Attachment #3  
Federal Recognition of Native Hawaiians as Native Americans**

**After 1900 through 1998 – 180 Federal Laws**

180 Federal laws either provided for the specific needs or conditions of Native Hawaiians or included Native Hawaiians in the class of Native Americans to be affected by those laws.

**1906 – 1949 Smithsonian Legislation and Ethnological Research**

Beginning in 1906 and through 1949, the Smithsonian Institution U.S. Bureau of American Ethnology was mandated, annually in the federal budget appropriation bill to conduct "ethnological researches among the American Indians and the natives of Hawaii"

**1921 Hawaiian Homes Commission Act**

The U.S. Congress set aside 200,000 acres as a trust for native Hawaiians. Lands were to be leased as homesteads for 99 years at \$1 a year.

The definition of native Hawaiian was "Any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

Committee Reports on the bill which established the Hawaiians Homes Commission provide evidence of the trust relationship between Hawaiians and the U.S. Government.

In the legislative record, House Report No. 839, 66<sup>th</sup> Congress, 2<sup>nd</sup> Session in 1919, (at 4,) Secretary of Interior Lane is quoted as saying, "One thing that impressed me there was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty."

Regarding the constitutionality of the Hawaiian Homes Commission Act, the Committee Report states (at 11), "In the opinion of your committee there is no constitutional difficulty whatever involved in setting aside and developing lands of the Territory for Native Hawaiians only. The privileges and immunities clause of the Constitution, and the due process and equal protection clauses of the 14<sup>th</sup> amendment thereto, are prohibitions having reference to State action only, but even without this defense the legislation is based upon a reasonable and not an arbitrary classification and is thus not unconstitutional class legislation. Further, there are numerous congressional precedent for such legislation in previous enactments granting Indians and soldiers and sailors special privileges in obtaining and using the public lands. Your committee's opinion is further substantiated by the brief of the attorney general of Hawaii (see hearings, pp. 162 – 164) and the written opinion of the solicitor of the Department of Interior (see hearings, pp. 130 – 131)"

Hearings Before the Committee on the Territories, House of Representatives Sixty-Sixth Congress Second Session on the Rehabilitation and Colonization of Hawaiians and other

Proposed Amendments to the Organic Act of the Territory of Hawaiian and on the Proposed Transfer of the Buildings of the Federal Leprosy Investigation Station at Kalawao on the Island of Moloka'i, to the Territory of Hawai'i – February 3,4,5,7, and 10, 1920

Opinion of the Solicitor of the Department of Interior (pp. 130 – 131)

Would an act of Congress setting apart a limited area of the public lands of the Territory of Hawaii for lease to and occupation by native Hawaiians be unconstitutional? It would not. There are numerous congressional precedents for such action. The act of Congress approved February 8, 1887, as amended by the act of February 28, 1891 (26 Stat., 794), authorizes public lands which have been set apart as Indian reservations by order of the President to be surveyed and 80 acres of land therein to be allotted to each Indian located upon the reservation, or where the lands are valuable for grazing, to be allotted in areas of 160 acres. Another section of the same act authorizes any Indians entitled to allotment to make settlement upon any public lands of the United States, not otherwise appropriated, and to have same allotted to them.

Brief of the Attorney General of Hawai'i (pp. 162 – 164)

In my opinion it is clear from the language of this section and the adjudicated cases, that it does not limit the power of Congress to enact the legislation recommended by concurrent resolution No. 2 [Hawaiian Homelands Resolution]. That portion of section 1 of the fourteenth amendment, which is germane to the subject under consideration, reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." This is a limitation on the power of the states and in nowise limits the power of Congress. The language of this section is so clear on this point as to admit of no argument. "This section of the Constitution operates only as a protection against State action." (12 C. J. 111; Robinson v Fishback, 175 Ind. 132; Mulligan v United States, 120 Fed. 98; Farrell v United States, 110 Fed. 942) After a consideration of the various principles involved, I am of the opinion that nothing in the Constitution of the United States prohibits Congress from enacting the legislation recommended by Senate Concurrent Resolution No. 2. Respectfully submitted, Harry Irwin, Attorney General of Hawai'i.

### **1938 Kalapana Extension Act**

Authorizes leasing land within the Hawai'i National Park and recognizes fishing rights in the area for Native Hawaiians who are residents of Kalapana.

H.R. 1995, Public No. 680, Sec. 3. (a) That the Secretary of the Interior is authorized to lease, under such rules and regulations as he may deem proper, land ascertained by him to be suitable for home site purposes in the Kalapana extension as described herein, to native Hawaiians when such occupancy does not encroach on or prevent free access to any points of historic, scientific, or scenic interest or in any manner obstruct or interfere with protection and preservation of said area as a part of the Hawaii National Park: *Provided, however*, That occupants of homesites shall reside on the land not less than six months in any one year: *And provided further*, That fishing shall be permitted in said area only by native Hawaiian residents of said area or of adjacent villages and by visitors under their guidance. (b) The term "native Hawaiian", as used in this section, means any

descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

#### **1959 Hawai'i Statehood Admission Act**

Hawai'i became a state. As a compact between the U.S. federal government and the State of Hawai'i, the State of Hawai'i adopts as a provision of the state constitution the Hawaiian Homes Commission Act, but changes cannot be made to the law without the consent of the U.S. Congress. The Admission Act also set up the "Ceded Public Lands Trust" for five purposes, one of which is the "betterment of native Hawaiians as defined by the Hawaiian Homes Commission Act, 1920, as amended." The United States retains oversight of the trust by a provisions which states that "their use for any other object shall constitute a breach of trust for which suit may be brought by the United States."

The boundary of the State of Hawai'i includes the submerged and surface lands of the northwest islands up through Kure, except for Midway, Johnston Island, Sand Island (off-shore from Johnston Island and Kingman Reef which are part of the lands which were originally part of the Kingdom of Hawai'i and were claimed by the Republic of Hawai'i which ceded these lands to the U.S. government.

#### **Origin and Intent of Federal Oversight of Hawaiian Homes Commission Trust and the Ceded Public Lands Trust:**

#### **1935 Hearings before the Subcommittee of the Committee on the Territories, House of Representatives, 74-1 on H.R. 3034, October 7 – 18, 1935 –**

No mention of responsibility for Hawaiian Homes Commission. State is to retain the ceded public lands.

#### **1947 Hearings of the House Committee on Public Lands.**

The 1947 version of H.R. 49 provided for the adoption of the Hawaiian Homes Commission Act, 1920, as a law of the State of Hawai'i, perhaps in response to the testimony received during the 1946 Hearings. Amendments submitted by the Acting Secretary of Interior, Oscar Chapman, strengthen the responsibility of the U.S. Congress over the trust. In his letter which is part of the Committee Report, Appendix 5 he wrote:

"In order to protect adequately the benefits, the title to the Hawaiian homelands should be retained by the United States, and the paragraph should be recast into a compact by the State to carry out the purposes of the Hawaiian Homes Commission Act, 1920, in such a manner as to prohibit the obligation thus assumed by the State bring altered in substantive particulars without the consent of the United States. This arrangement would permit the actual administration of the Hawaiian homelands to continue to be exercised by the local officials, while the Congress would retain ultimate authority over those lands as Federal property."



Amendments by the Acting Secretary also set up what evolves into the ceded public lands trust. The trust is to be comprised of only 180,000 acres and for just 4 purposes - the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread basis as possible, and for the making of public improvements. Their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The federal government is to hold the remaining ceded public lands and decide what it will turn over to the state, 5 years after admission.

**1949 Report of the House Committee on Public Lands adds amendment to protect the national parks lands in Hawai'i"**

"Nothing contained in this Act shall be construed to affect the ownership and control by the United States of any lands or other property within Hawaii National Park which may now belong to, or which may hereafter be acquired by, the United States."

**1950 version of H.R. 49**

One more purpose for the ceded public lands trust is added to the law, "for public use."

**April 1950 Constitutional Convention**

63 delegates. 10 Hawaiians are delegates

**1953-1954-1955 Hearings**

The House and Senate Committees on Interior and Insular Affairs hammer out the details of the Admissions Act and the Department of Interior and the Statehood Commission work out compromise positions.. The Trust Responsibility of the United States Congress is reaffirmed in all three years; the ceded lands trust is expanded to include all of the ceded lands not withdrawn by the federal government at the time of admission into the union; the boundaries of the state are established.

**February 1955 – House of Representatives, Committee on Interior and Insular Affairs, Hawaii-Alaska Statehood Hearings**

"Mr Dawson. I am trying to get at the philosophy back of the inclusion of that language. [reference to Hawaiian Homes Commission language] Is that substantially it – that they are fearful that the Hawaiian Legislature, if they have the full authority and control of the Hawaiian Homes Commission lands, may divest those people of their lands some time in the future. Therefore, the guardianship of Congress is necessary to see that does not occur.

Mr. Abbott. I believe, sir, it was in response to the same question raised at the hearings during the week of December 11, 1954, in Honolulu that the spokesman for the Hawaiian Homes Commission, Mr. Trask, stated that in the constitutional convention there were representatives of the natives of Hawaii who felt that, unless there was this safeguard written in, the thousands of persons of Hawaiian blood, one-half or more, had some serious concern that the temptation of the legislature to modify those provisions might be

too great for them not to succumb to it. And it was agreeable to an overwhelming number. I believe all but one delegate to the constitutional convention agreed – and the constitutional convention so included a provision to that end – agreed to include it in as a part of the organic law of Hawaii in their constitution. Which in a rather real sense compares with similar provisions with respect to Indian lands as we have had them. Mr. Dawson. Wouldn't there be sufficient protection if they were written into the Hawaiian constitution as it is, without having to come back to Congress to get approval? Mr. Abbott. Mr. Dawson, it is similar to the retention of jurisdiction in the United States over Indian lands. It is in the nature of compact, a bilateral compact provision in the enabling act on the one hand and in the constitution on the other hand. The members here will recall that in considering the question of law and order jurisdiction with respect to Indian lands it developed that eight States had written into their enabling acts a waiver of jurisdiction over Indian lands until certain conditions were met. By this same token, the United States in its enable act, its compact and promise, agreed to retain jurisdiction. So that by analogy, Congress in this enabling legislation for Hawaii is retaining jurisdiction and at the same time the new State of Hawaii is waiving jurisdiction with respect to certain Hawaiian Home Commission functions until such time as Congress by affirmative legislation elects to change or repeal or amend the Hawaii Home Commission Act's language.

Mr. Sisk. Just a point of information. Where the term "native Hawaiian" is used, to what extent is that limited? I mean, who does that exclude and who does it include?

Mr. Taylor. It would include everyone of 50 percent Hawaiian blood and exclude those of less than 50 percent; 50 percent or more.

Mr. Sisk. On what basis? How do you determine? I mean, over a period of a great many years there has been movement of people, for instance, let's say, the people from the Orient coming in and so on and a certain amount of exchange. Actually I had in mind the particular moneys set aside from this land to the State exclusively for the Native Hawaiians. In other words, that would exclude any person who wasn't so decreed to be a native Hawaiian irrespective of economic condition. Am I right there? That is section © of 103. I was just curious to know the fine line of determination of demarcation there.

Mr. Abbott. On that point, Congressman, the recitation of the purpose of the Hawaiian Homes Commission act as written in 1920, if not that exact language – I can check- but it certainly paraphrases it because the declared purpose was for the betterment of native Hawaiians. That was one of the declared purposes of the act passed in 1920. The act then, of course, defined native Hawaiians as persons with one-half or more Hawaiian blood. It was apparently agreeable to the people of Hawaii, that is, the natives themselves, the beneficiaries, and did define the inside and outside limits of the benefiting groups.

Mr. Sisk. In other words, under that act, then all other groups, irrespective of their economic standing, are excluded?

Mr. Abbott. Do you mean other racial groups?

Mr. Sisk. Yes.

Mr. Abbott. Yes; they are. The history of the Hawaiian Homes Commission, of course, goes back to the monarchy in Hawaii and the efforts to provide a land base for native

Hawaiians and, while it is not entirely parallel to the Indian situation, does reach the so-called aboriginal group in Hawaii.

Mr. Sisk. Of course, the point I had in mind here was in view of the fact that all income from such ceded lands as was used in section © here – it occurred to me what provision there might be for groups which might be citizens of the State of Hawaii and yet would not fall necessarily in line as being native Hawaiians, that is, not be so ruled. I am just wondering what the benefit from that standpoint of public schools would be.

Mr. Aspinall (presiding). I am going to have to bring this discussion to a close in a minute or two. So govern yourselves accordingly.

Mr. Abbott. One additional thing, Mr. Chairman. I was concentrating on the clause "for the betterment of the conditions of native Hawaiians." Those terms are separable.

"Income therefrom shall be held by said State as a public trust for the support of the public schools." That would be a general benefit. "And other public educational institutions." That would be one purpose for which they may be used, for the betterment of conditions of native Hawaiians, and additional purposes and so on.

[Mr. Abbott was legal counsel to the House Committee on Interior and Insular Affairs]

#### **1974**

The U.S. Congress began to define Native Americans as Native Americans for benefits under the Native American Programs Act

#### **1978**

Hawai'i State Constitution Convention/Amendments:

Recognizes English and Hawaiian as the official language of Hawai'i

Commits state to the study of Hawaiian culture, history and language

Reaffirms rights traditionally exercised for subsistence, cultural and religious purposes by Hawaiian ahupua'a tenants

Establishes Office of Hawaiian Affairs

#### **November 23, 1993**

The United States Congress and President William Clinton offered an Apology to the Native Hawaiian people for the overthrow of the Kingdom of Hawai'i on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination

#### **December 1999**

U.S. Departments of Interior and Justice initiate the process of "Reconciliation" promised to Hawaiians under the Apology Law

**February 23, 2000**

U.S. Supreme Court decision in *Rice v. Cayetano* rules that elections for the Office of Hawaiian Affairs in which only Native Hawaiians vote violates the 15<sup>th</sup> Amendment of the U.S. Constitution

Regarding 14<sup>th</sup> Amendment violations the court stated, "It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes . . . We can stay far off that difficult terrain however."

**Testimony of**

**Paul M. Sullivan**

**on**

**S. 2899 and H.R. 4904**

**before the  
Committee on Indian Affairs  
U. S. Senate  
and the  
Committee on Resources  
U.S. House of Representatives**

**August 29, 2000**

**as revised September 6, 2000**

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9/6/2000

Senators Inouye and Akaka, Representatives Abercrombie and Mink, aloha and good morning. My name is Paul Sullivan. I am a citizen of Hawaii and of the United States. I am here before you today solely in those capacities. I am not representing my employer or any of the organizations to which I belong, and my opinions are not necessarily theirs. I am here on my own to offer my personal views on Senate Bill 2899.

I have had some experience in the analysis of Native Hawaiian legal issues. I am an attorney by occupation, and two years ago I wrote an article on Native Hawaiian gathering and property-access rights which was published in the University of Hawaii Law Review. I have taken the liberty of attaching a copy of this article to the written version of my testimony. I have also attached detailed comments on individual sections of this bill where specific points merit discussion. I hope these will be of use.

I urge you to vote against this bill. The bill raises grave constitutional issues and encourages a racial separatism completely at odds with this state's long and enviable record of racial tolerance and integration.

It appears that the bill is intended to nullify the U.S. Supreme Court decision in *Rice v. Cayetano*<sup>1</sup> which held that the definitions of "native Hawaiian" and "Hawaiian" in the state's Office of Hawaiian Affairs' organic legislation are "racial".

But this bill does not get away from race. In fact, classification by race and ancestry are its whole reason for being. The definition of "Hawaiian" which the *Rice* decision found to be racial is identical, in its functional elements, to the definition of "Native Hawaiian" in the Akaka Bill. Like the OHA definition, the bill classifies Hawaii's citizens by race, or by ancestry as a proxy for race, and permits one and only one group to form a "governing body" which Congress would then recognize and deal with like a Federally-recognized Indian tribe.

Would the U.S. Supreme Court accept such a racially-defined Hawaiian governing body as the valid equivalent of an Indian tribe? The answer is almost certainly that it would not. The U.S. Supreme Court in *U.S. v. Sandoval*<sup>2</sup> said that while Congress may recognize a tribe, it may not arbitrarily create one where none exists. The central characteristics of a "tribe" are that it has maintained its separateness and its governmental character. But Native Hawaiians as defined in this bill are thoroughly integrated into the society of Hawaii and the nation,<sup>3</sup> and as a group they possess no governmental character whatsoever.

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<sup>1</sup> \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044 (2000). The court held that the state's limitation of the franchise in statewide elections for OHA trustees to "Hawaiians" unconstitutionally denied to non-Hawaiians their Fifteenth Amendment right to vote.

<sup>2</sup> 231 U.S. 28 (1913).

<sup>3</sup> The Akaka Bill makes a number of statements to the effect that "Native Hawaiians" have maintained "their separate identity as a distinct native community". I have addressed some of these in some detail in my attached written comments on the bill. Suffice it here simply to note that the picture which these recitations paint of Native Hawaiians as some sort of entity

Of course, there is a finding in this bill, echoing the Apology Resolution, that "Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands". But the U.S. Supreme Court in the *Rice* case made it clear that it did not feel bound by such recitations and will look behind them to determine their validity. In the *Rice* case, it did not rely on the findings of the Apology Resolution and other Federal statutes concerning Hawaiian history and Congressional authority. It did its own research and made up its own mind.

If the Supreme Court looks behind the findings of this bill, it is almost certain to conclude that contrary to those findings, Native Hawaiians never had sovereignty under the Kingdom of Hawaii, have no sovereignty or governmental character now, and never had any valid claim to the ceded lands either under the Kingdom or since.<sup>4</sup> While these conclusions are not often stated, they are supported by substantial authority.

For over twenty years after the creation of OHA, Native Hawaiians were assured by all branches of state government, and by Congress and some Federal administrations, that special statutory treatment and privileges for those of their ancestral background were not only constitutional, but fully justified by history and simple justice. The *Rice* decision said in plain, straightforward language that what Native Hawaiians had been told was wrong. Although its actual decision was narrowly limited to the Fifteenth Amendment, its analysis was broader and indicated that all statutes affording special privileges to Native Hawaiians as such may be vulnerable to challenge as unconstitutional "racial" preferences.

Many Native Hawaiians were shocked and angry at the *Rice* decision, and their feelings are understandable. But enacting additional constitutionally vulnerable legislation is unlikely to help. Such laws will only raise the hopes of Native Hawaiians once again, and the courts may very well dash those hopes once again. This can hardly be good for Native Hawaiians or anyone else.

A preferable course may be to consider whether the oft-repeated claims of stolen lands, lost sovereignty, and racial oppression have any place in the post-*Rice* world. Because these claims do not stand up to close and disciplined scrutiny, there is little likelihood that they will be settled either in the courts or in Congress in a manner satisfactory to those who assert them. But these claims are deeply and emotionally held, and so, valid or not, they remain a barrier to the reconciliation which Senator Akaka and others seek. It may be that the Committee should undertake a thorough examination of

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definable other than by race, and existing independently of the rest of the state's society, does not match the common experience of people in Hawaii. Persons of Hawaiian ancestry live in all areas of the islands, work at all occupations found in the islands, participate in government at all levels, intermingle socially with all other groups, and are otherwise full and integrated participants in Hawai'i's society.

<sup>4</sup> See Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawaii*, 20 U.Haw. Law Rev. 99 (1998); Patrick W. Hanifin, *Hawaiian Reparations: Nothing Lost, Nothing Owed*, 17 Haw. Bar J. (No. 2) 107 (1982).

these persistent issues in the light of the *Rice* decision, with full and open opportunity for public testimony and other input. Perhaps such an examination, conducted with patience and scholarship, might help all concerned to understand the frailties of Native Hawaiian claims from legal, historical, and constitutional viewpoints.

But whatever the committees do, they should not report a bill which has little or no chance of surviving a Supreme Court challenge. Unfortunately, this is such a bill, and I ask that you vote against it.

Thank you for your kind consideration. I would be happy to answer any questions.



**Section-by-section comments on S. 2899 and H.R. 4904**

**Presented by  
Paul M. Sullivan**

**to the  
Committee on Indian Affairs  
U. S. Senate  
and the  
Committee on Resources  
U.S. House of Representatives**

**August 29, 2000**

**as revised September 6, 2000**

The provisions of the bill on which comments are offered are set out in bolded italics and are followed by comments in Roman type. Comments are provided on selected subsections only. The fact that comments are not provided on every part of the bill reflects the brief time available to prepare comments and should not be construed to imply the author's agreement with those sections or subsections of the bill on which no comments are made.

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**SECTION 1. FINDINGS.**

***Congress finds that-***

***(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States***

**Comment:** The Ninth Circuit's thoughtful analysis in *Williams v. Babbitt*, 115 F.3d 657 (9th Cir. 1997) of the limits of *Morton v. Mancari*, 417 U.S. 535 (1974), suggests otherwise. In *Morton*, the U. S. Supreme Court considered an employment preference for Indians in the Bureau of Indian Affairs. In upholding the preference against a challenge that it constituted racial discrimination, the court noted that preferences for Indians are "political" in nature and would be upheld if they were "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." The court made clear, however, that Congress' "unique obligation" is not to a group who simply claim descent from American Indians living in American before Western contact, or to any other group defined solely by ancestry. It pointed out:

The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.

The court subsequently noted:

The preference is not directed towards a 'racial' group consisting of 'Indians'; instead, it applies only to members of 'federally recognized' tribes. This operates to exclude many individuals who are racially to be classified as 'Indians'. In this sense, the preference is political rather than racial in nature

The Ninth Circuit in *Williams v. Babbitt* examined *Morton* in the context of an Interior Department decision interpreting the Reindeer Act of 1937 to limit the owning, importing or selling of reindeer in Alaska to Alaska Natives. Williams challenged the exclusion of non-natives from these activities as racial discrimination subject to strict scrutiny. The Government asserted that *Morton* should govern and its more lenient rational basis standard should apply. The Ninth Circuit, noting that "reindeer are neither native to Alaska nor part of the Alaskan native way of life", that the reindeer business is not "uniquely native" and that the statute in question "in no way relates to native land, tribal or communal status, or culture", applied strict scrutiny and concluded that the Interior Department position failed that test. It stated:

Legislation that relates to Indian land, tribal status, self government or culture passes *Mancari's* rational relation test because "such regulation is rooted in the unique status of Indians as 'a separate people' with their own political institutions." *United States v. Antelope*, 430 U.S. 641, 646, 97 S.Ct. 1895, 1899, 51 L.Ed.2d 701 (1977). As "a separate people," Indians have a right to expect some special protection for their land, political institutions (whether tribes or native villages) and culture. . . . While *Mancari* is not necessarily limited to statutes that give special treatment to Indians on Indian land, we do read it as shielding only those statutes that affect uniquely Indian interests.

*Williams v. Babbitt*, 115 F.3d 657, 664-65.

*Morton* and *Williams v. Babbitt* indicate that tribal status and separateness as a people must underlie the establishment of special Indian preferences. As the court in *Williams v. Babbitt* stated, Federal regulation of Indian affairs is "rooted in" those circumstances. This is consistent with both of the principal sources of Federal constitutional authority concerning Indians, the power under Art. I, section 8, clause 3 to regulate commerce with the "Indian tribes" and the presidential treaty power granted in Art. II, section 2, clause 2. Both of these are consistent with the notion that the Federal government is authorized to deal with other existing governmental entities. Both presume that the "tribes" or foreign governments to be dealt with already exist. Neither could logically or practically operate in the absence of a pre-existing governmental entity, and neither suggests that the Federal Government could properly create a governmental entity with which to deal. In other words, if in fact an American Indian governmental

entity exists, then Congress has constitutional authority to deal with it, and to make special provision for its members.

The bill, however, would turn the logic backwards by declaring that Congress has a "special responsibility" for the "aboriginal", "indigenous" and "native" peoples (or more precisely, with modern-day individuals who can claim descent from precontact ancestors who arguably could have claimed aboriginal or indigenous status) which permits it to authorize some or all of these individuals to create an entity to which Congress will then extend governmental authority. The Constitution provides no obvious support for such a contention, and nothing in the logic of Congress' authority over Indian tribal relations supports such a contention.

There is no constitutional warrant for the creation of a tribe as proposed in this bill. The broad power of the Federal executive and Congress notwithstanding, no "tribe" eligible to claim the "special relationship" with the U.S. can be created where none exists in reality. In *U.S. v. Sandoval*, 231 U.S. 28 (1913), the U.S. Supreme Court considered whether the Pueblo Indians could be brought by Congress within the "special relationship". It examined a variety of factors indicating that Congress could do so, including the facts that the Pueblos are "Indians in race, custom, and domestic government", that they lived "in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetichism [sic], and [are] chiefly governed according to the crude customs inherited from their ancestors." It balanced these considerations against arguments that the Pueblos were citizens of the United States (unlike most Indians at the time) and that their lands were held by them in fee simple (rather than being held in trust by the Federal Government) and concluded that it was within the power of Congress to treat the Pueblos as an Indian tribe. The court cautioned, however, that "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46.

There is no Hawaiian "tribe", and one case which considered a claim by a purported Hawaiian tribe indicates that Hawaiians are unlikely be able to establish such a status under BIA policy. *Price v. Hawai'i*, 764 F.2d 623 (9th Cir. 1985). Unlike the Pueblo communities, there is no unifying group character to "Native Hawaiians" other than race, no existing government, and as Mr. Kanahele points out in the work quoted below, there is no distinct "Native Hawaiian" community (geographical or social) maintaining an existence separate from other elements of Hawai'i's population, and no distinct culture.

***(2) Native Hawaiians, the native people of the State of Hawai'i are indigenous, native people of the United States***

**Comment:** Native Hawaiians, as defined in this bill, cannot properly be characterized either as "a people" or as "indigenous".

a. **"People."** The bill appears to refer to "Native Hawaiians" in several instances as a "people", apparently in the sense defined in Webster's Third New International Dictionary (Unabridged) (1993), p. 1673 as "a body of persons that are united by a common culture, tradition, or sense of kinship though not necessarily by consanguinity or by racial or political ties and that typically have a common language, institutions, and beliefs." Native Hawaiians, as defined in the bill, cannot claim such a status. As one prominent Hawaiian scholar has put it:

These are the modern Hawaiians, a vastly different people from their ancient progenitors. Two centuries of enormous, almost cataclysmic change imposed from within and without have altered their conditions, outlooks, attitudes, and values. Although some traditional practices and beliefs have been retained, even these have been modified. In general, today's Hawaiians have little familiarity with the ancient culture.

Not only are present-day Hawaiians a different people, they are also a very heterogeneous and amorphous group. While their ancestors once may have been unified politically, religiously, socially, and culturally, contemporary Hawaiians are highly differentiated in religion, education, occupation, politics, and even their claims to Hawaiian identity. Few commonalities bind them, although there is a continuous quest to find and develop stronger ties.

George S. Kanahale, *The New Hawaiians*, 29 Social Process in Hawai'i 21 (1982).

Mr. Kanahale's observations explain why the "society" of today's Native Hawaiians, as they are defined in this bill, is the "society" of the State of Hawai'i and the United States. They do not, as a group or as several groups, live apart from the larger community of the state and nation. Today's citizens of Hawaiian extraction do not share the religion, language, forms of government, economics or any other of the defining social or cultural structures of precontact Hawaiian civilization. See Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U.Haw. Law Rev. 99 (1998). As Mr. Kanahale correctly observes, they are fully and completely integrated into the larger social and economic life of the state of Hawai'i and the nation. They hold positions of power and respect at all levels of society including business, government and the arts; for example, in the past several years, Hawai'i has had a Native Hawaiian Governor (John Waihee), a Native Hawaiian state supreme court chief justice (William S. Richardson), a Federal District Court judge (Samuel King), a U.S. Senator (Daniel Akaka) and numerous state officials, judges and members of the state legislature.

Indeed, the use of the terms "they" and "them" with respect to "Native Hawaiians" is of questionable validity, except in the context of the racial definitions of this bill, and of earlier Federal and state legislation using the same racial definition. Except for race, there is no way to distinguish "them" from "us".

Even the meaningfulness of racial categories has come into question. In his introduction to Eleanor Nordyke's comprehensive study of Hawai'i's various ethnic groups, Robert C. Schmitt, Hawai'i's former State Statistician in what was then known as the Department of Business and Economic Development, noted an "erosion in the availability, quality, and meaningfulness of some of our most important [data] series." He observed:

Budget cuts have forced drastic reductions in sample sizes used in the decennial censuses, the HHSP [Hawai'i Health Surveillance Program], and HVB [Hawai'i Visitors Bureau] Basic Data Survey. The 1950 census was the only such effort in the twentieth century to collect comprehensive data on race mixture, and in 1970 the Bureau of the Census deleted the category of "Part Hawaiian," which had appeared in all seventeen official enumerations from 1849 through 1960. As a result, the 1970 census was comparable neither to its predecessors nor to the birth, death, marriage, divorce, and related statistics regularly compiled by various state agencies. Further definitional changes occurred in 1980, with still others in prospect for 1990.

These cutbacks in statistical programs occurred at the very time that Hawai'i's population dynamics were becoming ever more complex, further complicating a situation that was already badly tangled twenty years earlier. Interracial marriage and a growing population of mixed bloods had been characteristic of Hawai'i since at least the 1820's, but prior to World War II most of these unions and their issue could be conveniently classified as "Part Hawaiian." **For the past half century, however, all groups have participated in such heterogeneous mating. As a consequence, according the State Department of Health, 46.5 percent of the resident marriages occurring in Hawai'i in 1986 were interracial, and 60.6 percent of the babies born to civilian couples of known race that year were of mixed race. Based on tabulations from the HHSP, fully 31.2 percent of all persons living in households were of mixed parentage--19.9 percent Part Hawaiian and 11.3 percent of other origins.** Yet neither the 1970 nor 1980 censuses provided any indication of such developments.

**These statistical gaps, in combination with the growing complexity of demographic events, have seriously handicapped Hawai'i's demographers. Even such a fundamental (and ostensibly simple) question as "Which groups are growing, which are declining, and by how much?" can no longer be answered, even in the most approximate terms: shifting and often arbitrary racial definitions have rendered decennial census tabulations almost useless, and annual data from the HHSP, now our sole source of population estimates by detailed race, have been marred by high sampling variation and**

**unexplainable (and sometimes unreasonable) fluctuations in group totals.**

Calculation of accurate birth, death, and other rates has consequently become exceedingly problematic. These difficulties are especially daunting in a work like the present one, which relies to an uncommon degree on accurate, consistent, and meaningful ethnic statistics. It is a tribute to Eleanor Nordyke's skill and perseverance that, in the face of such intractable underlying data, she has been able to fashion any kind of reasonable and defensible conclusions.

The importance of this analysis is underscored by the irresistible impact of the changes now sweeping Hawai'i. **Not only are the state's once-distinctive ethnic groups—under the influence of pervasive intermarriage—turning into a racial chop suey, but even those maintaining a fair degree of endogamy are becoming indistinguishable from their neighbors, as their third, fourth, and fifth generations succumb to cultural "haolefication."** These trends, plus the growing irrelevance of ethnic statistics, suggests that this may be our last chance to capture the significant differences among Hawai'i's people. When these differences can no longer be charted, either because the population has become biologically and culturally homogenized or because government no longer collects meaningful data, Hawai'i's value as a social laboratory will vanish.

Robert C. Schmitt, *Introduction to ELEANOR NORDYKE, THE PEOPLING OF HAWAII* xvi-xvii (1989). (Bolding added.)

b. **"Indigenous."** Webster at p. 1151 offers two definitions of "indigenous" which deserve consideration. The first is "a(1): not introduced directly or indirectly according to historical record or scientific analysis into a particular land or region or environment from the outside <Indians were the ~ inhabitants of America><species of plants that are ~ to that country>", and the second is "(2) originating or developing or produced naturally in a particular land or region or environment <an interesting example of ~ architecture><a people with a rich ~ culture>". The term "indigenous" does not appear in the Constitution, although that document does refer to the power of Congress to regulate commerce with the "Indian tribes". But Hawaiians have a strong oral tradition, supported by scholarly research, which places their arrival in the Hawaiian Islands somewhere between the time that Romans were colonizing England and the time that the Crusaders were invading the Holy Land. This hardly supports a claim of being "indigenous". In the context of Native Hawaiian claims, the term "indigenous" has more the character of a shorthand term for the one racial group, out of the many in Hawai'i, whose arrival antedated that of Westerners by a few hundred years and for which the claimants seek special political privilege and status.

**(3) the United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians**

**Comment:** This is precisely the law. In a recent survey of American Indian law, Judge William Canby states:

From time to time Indian litigants have urged the enforcement of a broader trust responsibility, going beyond the protection of tribal lands and resources and encompassing a duty to preserve tribal autonomy or to contribute to the welfare of the tribes and their members. As yet these attempts have not met with success in the courts, which tend to insist upon a statute or regulation establishing trust responsibilities, or upon the existence of federal supervision over tribal funds or other property. See *United States v. Wilson*, 881 F.2d 596, 600 (9th Cir. 1989).

WILLIAM C. CANBY, JR. AMERICAN INDIAN LAW 44 (1998).

Indeed, were the descendants of precontact Indians to have such a claim on the rest of the citizens of the United States, we would have precisely the notion of a "creditor race" which Justice Scalia rejected in his concurring opinion in *Adarand v. Peña*, 515 U.S. 200, 240 (1995).<sup>1</sup>

The comprehensive legal analysis in Stuart Minor Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 Yale L.J. 537 (1996), shows that no such "special relationship" exists at all in the case of Native Hawaiians.

The principal statute creating benefits for persons of Hawaiian ancestry has been held *not* to establish a Federal trust relationship. A claim of a trust relationship deriving from the Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, c. 42, 42 Stat.

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<sup>1</sup> *Adarand v. Peña*, 515 U.S. 200, 239, 115 S.Ct. 2097, 2118-19 (SCALIA, J., concurring). Justice Scalia continued:

That concept [of a creditor or debtor race] is alien to the Constitution's focus upon the individual, see Amdt. 14, sec. 1 ("[N]or shall any state . . . deny to any person" the equal protection of the laws) (emphasis added), and its rejection of dispositions based on race, see Amdt. 15, sec. 1 (prohibiting abridgment of the right to vote "on account of race") or based on blood, see Art. III, sec. 3 ("[N]o Attainder of Treason shall work Corruption of Blood"); Art 1, sec. 9 ("No Title of Nobility shall be granted by the United States"). To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.

Beyond the issue of race, the establishment of an entity within a state of the United States with special privileges based solely on the duration of residence or the accident of birth raises constitutional issues of due process, the privileges and immunities clause (see *Saenz v. Roe*, 526 U.S. 489, 119 S.Ct. 1518 (1999); *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309 (1982)), and the anti-nobility clauses (see, e.g., Jol A. Silversmith, *The "Missing Thirteenth Amendment": Constitutional Nonsense And Titles Of Nobility*, 8 S. Cal. Interdisciplinary L.J. 577, 609 (1999) ("We should remember that the nobility clauses were adopted because the founders were concerned not only about the bestowal of titles but also about an entire social system of superiority and inferiority, of habits of deference and condescension, of social rank, and political, cultural and economic privilege.")).

108, which provides homesteading opportunities to those of 50% Hawaiian "blood" was rejected twice, first in *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216, 1224 (9th Cir. 1978) and again in *Han v. Department of Justice*, 824 F.Supp. 1480 (D. Hawai'i 1993), *aff'd* 45 F.3d 333 (9th Cir. 1995), where the U.S. District Court explained in detail why no such trust relationship existed.

The U.S. Supreme Court has expressed grave reservations about the claim that Native Hawaiians share the "special relationship" which Native Americans tribes have with the United States. In *Rice v. Cayetano*, 120 S.Ct. 1044, 1057-58, the court stated:

If Hawai'i's [racial voting] restriction were to be sustained under [*Morton v. Mancari* 417 U.S. 535, (1974), sustaining a Bureau of Indian Affairs employment preference for Indians against an equal protection challenge that the preference was "racial"] we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting [in the Hawai'i Admission Act] the purposes for the transfer of lands to the State--and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution of 1993--has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the state a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, *The Political Status of the Hawaiian People*, 17 Yale L. & Pol'y Rev. 95 (1998) with Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 Yale L.J. 537 (1996). We can stay far off that difficult terrain, however.

A close examination of the issue suggests that if the U.S. Supreme Court were to enter upon that "difficult terrain", it would likely hold that Congress cannot constitutionally treat "Native Hawaiians" like tribal Indians. The Constitution at Article I, Section 8 extends to Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The U. S. Supreme Court has held that preferences for Indians were not violative of constitutional principles of equal protection of the laws, basing that conclusion on the fact that Indian preferences were created by Congress in recognition of the special status of Indian tribes as separate "quasi-sovereign" groups, *not* groups defined only by race. *Morton v. Mancari* found the employment preference for Indians in that case to be based on a "political" status rather than on "race" because Congress was legislating with respect to "members of quasi sovereign tribal entities", and that the preference "is not directed towards a 'racial' group consisting of 'Indians'; instead, it applies only to members of 'federally recognized' tribes". It pointed out that "[t]his operates to exclude many individuals who are racially to be classified as 'Indians'".



It also operates to exclude all individuals who are racially to be classified as "Native Hawaiian" as defined in this bill, since they are neither "Indians" nor members of any tribe.

***(4) under the treaty-making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawai'i, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;***

**Comment:** In the interest of completeness, it should be noted that U.S. acknowledgment of Hawai'i's national independence did not end in 1893. It continued after the termination of the monarchy, and the Hawaiian revolutionary government was diplomatically recognized not only by the U.S. but by many other powerful nations as well. MERZE TATE, *THE UNITED STATES AND THE HAWAIIAN KINGDOM* 191-92 (1965).

***(5) pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 200,000 acres of land in the Federal territory that later became the State of Hawai'i in order to establish a homeland for the native people of Hawai'i, Native Hawaiians***

**Comment:** The Hawaiian Homes Commission Act does not establish a "homeland"; it establishes a homesteading program for a small segment of a racial group. That is all it does, or was ever structured to do. See H. Rep. 839, 66th Cong., 2nd sess. (1920). Indeed, it is hard to see how a "homeland" for a "native people" could fairly be established on the basis of 99 year leases of Territorial or State land to individual farmers and homeowners (which is what the HHCA provides for) or by an act which limits eligibility for benefits only to persons of 50% Hawaiian "blood" (and by virtue of recent legislation, to children of homesteaders of 25% Hawaiian "blood") or to roughly 9% of Native Hawaiians as defined in the bill, as the HHCA does..

***(6) by setting aside 200,000 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawai'i;***

***(7) approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land;***

***(8) the Hawaiian Home Lands continue to provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and Native Hawaiians have maintained other distinctly native areas in Hawai'i***

**Comment on subsections (6), (7) and (8):** Since the HHCA is limited in its purpose and its scope to providing homesteads to persons of 50% Hawaiian ancestry, and since (as finding 1(7) acknowledges) only 6,800--less than 4%--of the approximately 200,000 Native Hawaiians (as defined in S. 2899) hold leases under the HHCA and only 18,000 others--about 9%--are on the waiting list, it is hard to see how the Hawaiian home lands could effectively help the entire "Native Hawaiian community" to maintain any specific culture, language and traditions. Certainly, homesteaders living in Hawaiian homes communities may and should have a strong sense of community, like neighbors in any community, but this is an effect, not a purpose, of the HHCA.

*(9) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawai'i for the United States' role in the overthrow of the Kingdom of Hawai'i*

**Comment:** The so-called Apology Resolution appears to have been adopted without careful examination of the purported "history" which it recites (see S. Rep. 103-126 (1993) and S. Rep. 102-456 (1992)), and the statements in the resolution's preamble provide no reliable support for the positions taken in this finding. Chapter 10 of THURSTON TWIGG-SMITH, HAWAIIAN SOVEREIGNTY: DO THE FACTS MATTER? (1996) addresses each of the major historical assertions of the Apology Resolution and explains how they are in error, or misleading.

The U.S. Supreme Court in *Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044, 1049-53 (2000) acknowledged the existence of the Apology Resolution and pointedly ignored it as historical authority, preferring instead its own inquiry, based on more conventionally scholarly works.

The Apology Resolution contains the following disclaimer: "Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."

When the Apology Bill was debated on the Senate floor, Senator Gorton asked Senator Inouye:

Is this purely a self-executing resolution which has no meaning other than its own passage, or is this, in [the proponent Senators'] minds, some form of claim, some form of different or distinct treatment for those who can trace a single ancestor back to 1778 in Hawai'i which is now to be provided for this group of citizens, separating them from other citizens of the State of Hawai'i or the United States?

\* \* \*

What are the appropriate consequences of passing this resolution? Are they any form of special status under which persons of Native Hawaiian descent will be given rights or privileges or reparations or land or money communally that are unavailable to other citizens of Hawai'i?

Senator Inouye replied:

As I tried to convince my colleagues, this is a simple resolution of apology, to recognize the facts as they were 100 years ago. As to the matter of the status of Native Hawaiians, as my colleague from Washington knows, from the time of statehood we have been in this debate. Are Native Hawaiians Native Americans? This resolution has nothing to do with that. . . . I can assure my colleagues of that. It is a simple apology.

139 Cong. Rec. S14477, 14480, Oct. 27, 1993.

It would appear that the bill views the Apology Resolution differently from the Senate which passed it, since the resolution is now offered in support of precisely the demands foreseen by Senator Gorton.

***(10) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawai'i occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum***

**Comment: "Inherent Sovereignty".** The Apology Resolution as well as the bill refer to the "sovereignty" or the "inherent sovereignty" of the "Native Hawaiian people" which was somehow taken from them at or about the time of the overthrow of the monarchy in 1893 and which has somehow persisted to the present day. Section 1(19)(B) states that "Native Hawaiians have never relinquished their claims to sovereignty", and the Apology Resolution, P.L. 103-150, 107 Stat. 1510, 1511 (1993) similarly states that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people[.]"

There is no historical or legal basis for these assertions. "Native Hawaiians", under the kingdom, never had "inherent sovereignty".<sup>2</sup>

Sovereignty, in the Hawaiian kingdom, resided inherently in the monarch, *not* the "people". In this respect, the monarchy was very different from a republic like the United States, where sovereignty--the supreme political authority within an independent nation--is with the people.

This difference was clearly set out by the Hawaiian kingdom's supreme court in the case of *Rex v. Booth*, 2 Haw. 616 (1863). A law of the kingdom prohibited sales of liquor to "native subjects" of the kingdom, but not to other inhabitants or visitors. The defendants argued that the law was unconstitutional under the 1852 Constitution as

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<sup>2</sup> The following discussion on sovereignty under the Kingdom of Hawai'i is taken in substantial part from Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U. Haw. Law Rev. 99, 152-53 (1998).

discriminatory class or special legislation. They asserted that in constitutional governments, legislative authority emanates from the people, and that the legislature acts as agent of the people, and that "it is against all reason and justice to suppose . . . that the native subjects of this Kingdom ever entrusted the Legislature with the power to enact such a law as that under discussion." The court responded:

Here is a grave mistake—a fundamental error—which is no doubt the source of such misconception. . . . The Hawaiian Government was not established by the people; the Constitution did not emanate from them; they were not consulted in their aggregate capacity or in convention, and they had no direct voice in founding either the Government or the Constitution. King Kamehameha III originally possessed, in his own person, all the attributes of sovereignty.

The court reviewed Kamehameha III's promulgation of the 1840 Constitution and its 1852 successor and explained that by these documents the king had voluntarily shared with the chiefs and people of the kingdom, to a limited degree, his previously absolute authority. The court explained:

Not a particle of power was derived from the people. Originally the attribute of the King alone, it is now the attribute of the King and of those whom, in granting the Constitution, he has voluntarily associated with himself in its exercise. No law can be enacted in the name, or by the authority of the people. The only share in the sovereignty possessed by the people, is the power to elect the members of the House of Representatives; and the members of that House are not mere delegates.

It would appear that both Kamehameha V and Queen Lili'uokalani believed that this sharing of sovereignty could be revoked or modified by the monarch who granted it, or by his or her successor. In 1864, when Kamehameha V became frustrated with the inability of the legislature to agree on amendments to the 1852 Constitution, he simply dissolved the legislature and promulgated a new Constitution on his own authority with the statement (quoted here from 2 KUYKENDALL, *THE HAWAIIAN KINGDOM* 132 (1953)):

As we do not agree, it is useless to prolong the session, and as at the time His Majesty Kamehameha III gave the Constitution of the year 1852, He reserved to himself the power of taking it away if it was not for the interest of his Government and people, and as it is clear that that King left the revision of the Constitution to my predecessor and myself therefore as I sit in His seat, on the part of the Sovereignty of the Hawaiian Islands I make known today that the Constitution of 1852 is abrogated. I will give you a Constitution.

Of like mind was Queen Lili'uokalani, who stated:

Let it be repeated: the promulgation of a new constitution, adapted to the needs of the times and the demands of the people, has been an indisputable prerogative of the Hawaiian monarchy.

LILI'UOKALANI, HAWAII'S STORY BY HAWAII'S QUEEN 21 (1898).

To these Hawaiian leaders of the past, a claim that the "Hawaiian people" had "inherent sovereignty" would likely have been viewed as treasonous.

Nor was the government of the Hawaiian Islands, in the decades immediately before the ending of the monarchy, "Hawaiian" or "Native Hawaiian". As early as 1851, foreign-born subjects of the kingdom sat in the legislature (3 RALPH S. KUYKENDALL, THE HAWAIIAN KINGDOM 191 (1967)) and held various degrees of control during the monarchy period (*See, e.g., id.* at 401-402, 406-410, 448-455). Westerners as well as natives sat as judges in the courts of the kingdom (*see, e.g.,* 2 RALPH S. KUYKENDALL, THE HAWAIIAN KINGDOM 241 (1938)) and as members of the cabinet along with natives and part-Hawaiians. Westerners had been trusted advisors of the monarchs from the time of Kamehameha I, and during the reign of King David Kalakaua (1874-1891), power changed hands frequently.

The king could appoint and dismiss ministers at will, and Kalakaua did precisely that. Before he was finally curbed he made thirty-seven ministerial appointments--more than all the kings before him had made among them--and **eleven of these went to men of Hawaiian blood.**

GAVAN DAWS, SHOAL OF TIME 214 (1968). (Emphasis added.)

By 1893, when the monarchy was replaced by a provisional government, natives and foreigners alike had long participated extensively in the political, social and economic life of the nation, and continued to do so. Racial tension was often high, but the government was not a government of, by or for a particular race. *See generally* 3 RALPH S. KUYKENDALL, THE HAWAIIAN KINGDOM (1967) ch. 19 - 20; Patrick W. Hanifin, *A Brief History of Citizenship and Voting Rights in Hawai'i (Kingdom, Republic, Territory, and State)*, <http://www.angelfire.com/hi2/hawaiiansovereignty/HanifinCitizen.html>. The sovereignty of the kingdom, once resident solely in the monarch, passed upon the revolution to the provisional government, then to the Republic, and then, upon annexation, to the United States. It was as U.S. citizens that "Native Hawaiians" truly came to share in the "sovereignty" of their nation as a matter of right.

The bill should omit any reference to past "sovereignty" of the "Native Hawaiian people". It never existed.

***(11) the Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution***

**Comment:** It is difficult to see how "reconciliation" can be advanced by separation; that is, by the establishment of a separate race-based "governmental" entity for Native Hawaiians within the State of Hawai'i. The U.S. Supreme Court has termed racial classifications "odious to a free people" (*Hirabayashi v. U.S.*, 320 U. S. 81 (1943)) and "presumptively invalid" (*Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979)); see generally *Adarand v. Peña*, 515 U.S. 200 (1995), in which the Court declared that "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny". The bill would segregate Hawai'i's population into two racially-defined groups, one with special status and privileges under Federal (and perhaps state) law and one without. The pronouncements of the U.S. Supreme Court indicate that this bill, if challenged, would be unlikely to pass constitutional muster.

*(12) despite the overthrow of the Hawaiian government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs*

**Comment:** This statement is factually inaccurate.

a. Native Hawaiians, as defined in the bill, are thoroughly integrated into Hawai'i's social, economic and political life. (See the comments to Subsection 1(2) above.) The formation of cultural, social and political institutions as described in this proposed finding is no more unique to Native Hawaiians than it is to any of the other ethnic groups which came to the islands and stayed to build communities. More importantly, as Robert C. Schmitt, Hawai'i's former State Statistician makes clear in the quoted material in comment 1(2) above, underlying the separating influences of ethnic traditions in the islands is an integration, fostered and perpetuated by extensive interracial and intercultural marriage, which is rapidly eroding even the remnants of ethnic boundaries which exist today.

b. Native Hawaiians do not give expression to "rights as native people to self-determination and self-governance" through OHA. OHA is a state agency. It carries out a discretionary decision of the state to apply certain state funds to "the betterment of native Hawaiians and Hawaiians", two groups identified solely by what the U.S. Supreme Court has ruled to be a racial definition. *Rice v. Cayetano*, \_\_\_ U. S. \_\_\_, 120 S.Ct. 1044, 1055-56 (2000). OHA is managed by trustees who are state officials elected by all the citizens of the state. The status of OHA as a state agency was precisely the reason why the U.S. Supreme Court in *Rice v. Cayetano* determined that it was unnecessary to decide whether Native Hawaiians are, legally speaking, analogous to American Indians; the court stated that whatever might be the rule in tribal elections, the election for OHA trustees was a state election for state officials, so the Fifteenth Amendment applied and invalidated the limitation of the franchise to one racial group. *Rice v. Cayetano*, 120 S.Ct. at 1058. So OHA is not a vehicle for "self-determination and self-governance", except perhaps in the limited sense that all citizens engage in self-determination and self-

governance on an individual basis by participating in the government of the state and the nation.

***(13) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control***

**Comment:** This statement is inaccurate. Native Hawaiians as a racial group (as defined by the bill) do not provide "governmental services" to anyone except perhaps insofar as individuals or groups might (1) assist state or local governmental agencies in providing governmental services or (2) offer, in a private capacity, services such as education which state or local government also offers. There is no Native Hawaiian government or anything resembling such an entity. While the services listed are important and valuable, they are also provided both by true governmental agencies and by private schools, service clubs, labor unions and other community service organizations which may or may not have roots in, or a focus on, one or more of the islands' ethnic elements.

***(14) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources***

**Comment:** It is no doubt true that some Native Hawaiians, as racially defined in the bill, engage in some or all of these activities, which presumably do not include the more dramatic practices of ancient Hawaiian religion (such as human sacrifice) which were abandoned at the insistence of the Hawaiian rulers shortly before the arrival of Christian missionaries in 1820. Persons who are not Native Hawaiians also engage in these activities, and many Native Hawaiians do not engage in them. The Committee is likely to find that, to the extent that this statement is true of some or even many Native Hawaiians, it is nonetheless immaterial to the decision whether to enact the bill.

***(15) the Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs***

**Comment:** Undoubtedly some people of Hawaiian ancestry desire some or all of these things. However, (1) if "ancestral lands" means "ceded lands", then Native Hawaiians as

defined in the bill have no special claim to those lands, and (2) if "Native Hawaiian political . . . identity" means "political power allocated by statute on the basis of race", then governmental action to preserve, develop or transmit such power would likely be unconstitutional, and (3) if "self-determination" involves special political power over state or Federal governmental decisions, then such self-determination would run afoul of the decision in *Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044 (2000).

Specifically with respect to the ceded lands, Native Hawaiian advocates have long asserted that Native Hawaiians have some special claim to the former Crown and government lands of the kingdom, sometimes referred to as the "ceded lands" because they were granted or "ceded" to the United States upon Hawai'i's annexation in 1898. These claims were examined in detail by the Congressionally-chartered Native Hawaiians Study Commission in 1983 and found to have no legal basis. See "Existing Law, Native Hawaiians and Compensation", 1 FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983), pp. 333-370; *but see* dissenting view in 2 FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983) 7-11, 80-99 (emphasizing moral rather than legal bases for reparations). They were examined again in 1995 in an environmental impact statement for land use changes at the Bellows Air Force Station in Waimanalo, Oahu. The Record of Decision therein concluded that these claims had no legal or historical validity. U.S. PACIFIC COMMAND, FINAL EIS FOR LAND USE DEVELOPMENT AT BELLOWES AIR FORCE STATION, WAIMANALO, HI (1995), section 6.6. These findings were not novel; they were fully consistent with the 1910 decision of the U.S. Court of Claims denying ex-Queen Lili'uokalani's claim for compensation for the loss of her interest in the Crown lands and holding that both the Crown and the government lands of the kingdom were, in essence, "public lands" (*Lili'uokalani v. U.S.*, 48 Ct. Cl. 418 (1910)).

There is absolutely no legal support whatsoever for the notion that at the time of the overthrow of the monarchy or at any time after the land revolution which began in 1848, Native Hawaiians held any interest, directly or as beneficiaries of some sort of implied trust, in the ceded lands. Every credible legal authority is to the contrary. See, e.g., JON J. CHINEN, *THE GREAT MAHELE, HAWAII'S LAND DIVISION OF 1848* 15-20 (1958); LOUIS CANNELORA, *THE ORIGIN OF HAWAII LAND TITLES AND OF THE RIGHTS OF NATIVE TENANTS* (1974). See generally Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U. Haw. Law Rev. 99 (1998).

***(16) this Act responds to the desire of the Native Hawaiian people for enhanced self-determination by establishing a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian governing body for the purpose of giving expression to their rights as native people to self-determination and self-governance***

**Comment:** For reasons explained earlier in this paper, Native Hawaiians as defined in the bill do *not* have inherent rights other than those shared by all citizens of the state and



the nation, are *not* aboriginal or indigenous, are *not* a "native community", and have *no rights to self-determination or self-governance* other than the political rights held by all citizens of the state of Hawai'i and the United States. In addition, at and for many years before the end of the monarchy in 1893, there was no "Native Hawaiian governing body", and there is no basis for the "reorganization" of such a body now.

The broad power of the Federal executive and Congress notwithstanding, no "tribe" can be created where none exists in reality. As explained in more detail in the comment on subsection 1(1) above, the U.S. Supreme Court in *U.S. v. Sandoval*, 231 U.S. 28 (1913) held that the Pueblo Indians could be brought by Congress within the "special relationship" with Indian tribes even though the Pueblos did not share all the characteristics of other tribes. Nevertheless, the court commented that "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46.

This caution deserves careful consideration before Congress attempts to bring "Native Hawaiians", who share none of the group or individual characteristics deemed pertinent in *Sandoval*, within the ambit of the "special relationship" which Congress has with true Indian tribes. Unlike the Pueblo communities, there is no unifying group character to "Native Hawaiians" other than race, and under current law, no aggregation of people on grounds of their race alone can lawfully be given special privileges at the ballot box (*Katzenbach v. South Carolina*, 382 U.S. 967 (1966); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)) or elsewhere (*Adarand Constructors v. Federico Pena*, 515 U.S. 200 (1995)).

There is no Hawaiian "tribe", and one case which considered a claim by a purported Hawaiian tribe indicates that Hawaiians are unlikely be able to establish such a status. *Price v. Hawai'i*, 764 F.2d 623 (9th Cir. 1985).

Thus the bill would, if enacted, extend privileged political status to a group defined solely by race or ancestry. Given the U.S. Supreme Court's cautionary language in *Rice*, Congress should consider carefully whether such an outcome is either socially wise or constitutionally permissible.

***(17) the United States has declared that-***

***(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians***

**Comment:** See the comment on Subsection 1(3) above. With all due respect for Congress' authority, it must be noted that Congress' constitutional authority relates to Indian tribes, not to "native peoples of the United States". In *Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044 (2000), the Court, in passing on the state of Hawai'i's argument that

special statutory treatment for Native Hawaiians is justified on the same basis as Congress' power with respect to Indians, said "[a]s we have observed, 'every piece of legislation dealing with Indian tribes and reservations . . . single[s] out for special treatment a constituency of tribal Indians.'" *Id.* at 1058. In discussing *Morton v. Mancari*, 417 U.S. 535 (1974), the Court took pains to note that in that case, "the Court found it important that the preference [there in question] was 'not directed toward a "racial" group consisting of "Indians"', but rather 'only to members of "Federally recognized" tribes.'" *Id.* As noted earlier in these comments, extending Congress' "special responsibility" to "native peoples" goes beyond present law.

***(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and***

**Comment:** The issue, of course, is not whether Congress has done what the proposed finding says, but whether in so doing it acted within its constitutional authority. The U.S. Supreme Court's decision in *Rice v. Cayetano* suggests that it did not.

(C) \* \* \*

***(18) the United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through-***

***(A) the enactment of the Act entitled "An Act to provide for the admission of the State of Hawai'i into the Union", approved March 18, 1959 (Public Law 86- 3; 73 Stat. 4) by-***

***(i) ceding to the State of Hawai'i title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for the betterment of the conditions of Native Hawaiians; and***

**Comment:** This finding is inaccurate. There is no general mandate in the cited statute (the Hawaii Admission Act) that any lands be held in public trust for the betterment of the conditions of "Native Hawaiians" as defined in this bill.

a. First and most obviously, the Hawai'i Admission Act provides benefits only to persons of 50% Hawaiian "blood", not "Native Hawaiians" defined in the bill as persons with any degree of Hawaiian ancestry.

b. Second, the Admission Act did not require that all or any part of the ceded land trust proceeds be used for the betterment of native Hawaiians; it merely listed "the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act" as *one of five purposes* for which the ceded lands trust proceeds might be used. The statute expressly states that the proceeds of the ceded lands trust may be used for "one or more" of the five enumerated purposes. The statute permits the state to determine how the trust proceeds are distributed. *Price v. State of Hawai'i*, 764 F.2d 623 (9th Cir. 1985). Such state decisions, of course, are subject to the constraints of the

Fourteenth Amendment and the *Adarand* decision with respect to any racial test for allocation or receipt of benefits. Indeed, because the U.S. Supreme Court has held that the definition of "native Hawaiian" in Hawai'i's statutes is racial (*see Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044, 1056-57 (2000)), the Admission Act provision concerning "native Hawaiians" is under some degree of threat.

***(ii) transferring the United States' responsibility for the administration of the Hawaiian Home Lands to the State of Hawai'i, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawai'i affecting the beneficiaries under the Act***

**Comment:** Claims of a Federal trust relationship founded upon the Hawaiian Homes Commission Act (HHCA) and the Hawai'i Admission Act which transferred HHCA responsibilities to the State of Hawai'i have been rejected by the Federal courts.

In 1978 the U.S. Court of Appeals for the Ninth Circuit dismissed claims for breach of a claimed trust brought by beneficiaries of the HHCA against that agency and its chairman. It held that plaintiffs had no Federal cause of action under the Admission Act because "[w]ith Hawai'i's admission into the Union, the national government virtually relinquished its control over and interest in the Hawaiian home lands. The problem described in plaintiffs' complaint is essentially a matter of state concern." *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216, 1224 (9th Cir. 1978). It held further that the Federal court lacked jurisdiction over plaintiffs' claims under the HHCA itself because that act, after statehood, was a matter of state rather than Federal law.

A claim of a trust relationship was raised again and rejected again in *Han v. Department of Justice, et al.*, 824 F.Supp. 1480 (D. Hawai'i 1993), *aff'd* 45 F.3d 333 (9th Cir. 1995). The District Court stated bluntly:

First, as a matter of law, the federal defendants have no trust responsibility to plaintiff or other native Hawaiians under statutory or case law. The Ninth Circuit Court of Appeals has expressly held that "the state is the trustee . . . The United States has only a somewhat tangential supervisory role under the Admission [Statehood] Act, rather than the role of trustee. . . . Furthermore, nothing in the statutes at issue here indicates the federal defendants have a trust duty. The Admission Act specifically requires the State of Hawai'i to hold the home lands "as a public trust for the . . . betterment of the conditions of native Hawaiians." Admission Act section 5(f). There is no such corresponding duty on the part of the United States.

*Id.* at 1486.

Indeed, the District Court expressly rejected the argument set out in the proposed finding that the Federal government's reserved power to enforce the state's obligation,

and the restrictions imposed on the state's power to amend the HHCA, implied a Federal trust obligation. The court stated:

Section 4 merely establishes a compact between the State of Hawai'i and the United States, whereby the state has agreed not to amend any of the Commission Act's substantive provisions without the consent of the United States. Admission Act section 4. This creates an obligation of the state, not the federal government. And while the federal government may bring an enforcement action, it is not by law required to.

*Id.* at 1486.

More fundamentally, the HHCA provides no support for the arguments that Congress has constitutional authority to legislate concerning the "conditions of Native Hawaiians", that HHCA benefits are not "racially" allocated or that the racial distinction at its core is constitutional. As noted above, the HHCA benefits only those of 50% Hawaiian blood under a definition of "native Hawaiian" which the U. S. Supreme Court in *Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044, 1056-57 (2000) held to be racial. Beyond this, the HHCA itself is constitutionally infirm. It was enacted in the heyday of *Plessy v. Ferguson*, 163 U.S. 537 (1896), which upheld the racial segregation of certain transportation facilities and the concept that "separate but equal" facilities meet the requirements of the Fourteenth Amendment. The thinking of those times is reflected in a quote from the testimony of the Franklin Lane, then Secretary of the Interior, in support of the bill which would become the HHCA. Lane said of the "natives of the islands":

There is a thriftlessness among those people that is characteristic among peoples that are raised under a communist or feudal system. They do not know what the competitive system is and they will get rid of property that is given them. They do not look forward. They can not see to-morrow. Therefore, they should be given as close identification with their country as is possible and yet be protected against their own thriftlessness and against the predatory nature of those who wish to take the land from them, and who have in the past.

H.R. Rep. No. 839, 66th Cong., 2nd sess. at 4. This was said more than three generations after the end of the "communist or feudal" system in the islands, at a time when Hawaiians were a major power in the Territorial legislature and constituted much of the civil service (See LAWRENCE H. FUCHS, HAWAII PONO: A SOCIAL HISTORY 161-62 (1960)). If such condescending stereotyping was ever a lawful basis for Federal legislation, *Adarand v. Peña*, 515 U.S. 200 (1995) and a simple regard for the truth deprive it of validity today.

*Plessy* was effectively overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954), beginning a line of jurisprudence, culminating in *Adarand*, which forms the foundation for our present constitutional law on race-based decision-making by the government. It is hardly likely that if the HHCA were proposed today, it would survive the strict scrutiny which *Adarand* requires.

***(19) the United States continually has recognized and reaffirmed that-***

***(A) \* \* \****

***(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;***

**Comment:** "Sovereign lands". The meaning of this term is not set out in the bill, but the near certainty is that it refers to the so-called "ceded lands"--the Crown lands and government lands of the kingdom, taken over by the revolutionary government in 1893 and ceded to the United States at annexation in 1898. Native Hawaiian advocates have claimed that Native Hawaiians have some special claim to these lands. These claims are baseless. The ceded lands were lands of the kingdom, and from the time of the Great Mahele of 1848, "Native Hawaiians" as a racial or ancestrally-defined group had no legal interest in or right to these lands except insofar as they had rights to vote as subjects of the kingdom--rights shared by the non-"Native Hawaiian" subjects and denizens of the kingdom. Patrick W. Hanifin, *Hawaiian Reparations: Nothing Lost, Nothing Owed*, 17 *Hawai'i B.J.* 107 (1982); "Existing Law, Native Hawaiians and Compensation", 1 FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983), pp. 333-370; U.S. PACIFIC COMMAND, FINAL EIS FOR LAND USE DEVELOPMENT AT BELLOWS AIR FORCE STATION, WAIMANALO, HI (1995), section 6.6.

***(C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and***

***(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.***

**Comment:** See comments to subsections 1(1) - 1(3) above.

## **SEC. 2. DEFINITIONS.**

***In this Act:***

***(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE . - The term "aboriginal, indigenous, native people" means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States***

**Comment:** This term is unhelpful as applied to Native Hawaiians, since with the exception of the ruling chiefs of the islands, neither the original inhabitants of Hawai'i nor "Native Hawaiians" as defined in the bill exercised sovereignty prior to European contact. See *Rex v. Booth*, 2 Haw. 616 (1863) and the comment to section 1(10) above.

\* \* \*

**(5) INDIGENOUS, NATIVE PEOPLE.**—*The term "indigenous, native people" means the lineal descendants of the aboriginal, indigenous, native people of the United States.*

**Comment:** This definition, with its exclusive focus on ancestry, carries the same constitutional implications as the definitions of "Hawaiian" and "native Hawaiian" addressed in *Rice v. Cayetano*. This definition, like those, uses ancestry as a proxy for race, and any statute relying upon it must be drafted to meet the constitutional test of strict scrutiny as described in *Adarand v. Peña*, 515 U.S. 200 (1995).

**(6) NATIVE HAWAIIAN.**—

*(A) Prior to the recognition by the United States of a Native Hawaiian governing body under the authority of section 7(d) of this Act, the term "Native Hawaiian" means the indigenous, native people of Hawai'i who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawai'i on January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawai'i, as evidenced by (but not limited to)–*

- (i) genealogical records;*
- (ii) Native Hawaiian kupuna (elders) verification or affidavits;*
- (iii) church or census records; or*
- (iv) government birth or death certificates or other vital statistics records;*

**Comment:** This definition is indistinguishable, in its essentials, from the definition of "Hawaiian" which the U.S. Supreme Court in *Rice v. Cayetano* found to be "racial". As with the definition of "Hawaiian", this definition identifies a class within today's population of Hawai'i solely by ancestry. As with the definition of "Hawaiian", the ancestral link must be to the inhabitants of the Hawaiian Islands before Western contact; the definition of "Hawaiian" describes these inhabitants as those in the islands before 1778, while this bill refers to them as the "aboriginal, indigenous, native people", but the group is manifestly the same. Lest there be any doubt, subsection 2(1) of the bill defines "aboriginal, indigenous, native people" as the "original inhabitants . . . prior to European contact".

The language in the bill limiting the benefited class to descendants of those "who resided in the islands that now comprise the State of Hawai'i on January 1, 1893" does nothing to lessen its racial character. What makes the definition "racial" is the test for who is in the class, not the exclusion of a subclass within that class. For example, the definition of "Hawaiian" in OHA's governing statute is far broader than the definition of "native Hawaiian", yet the Court in *Rice v. Cayetano* held that both of these definitions share "an explicit tie to race." *Rice v. Cayetano*, \_\_\_ U.S. \_\_\_, 120 S.Ct. 1044, 1056. The court went on to say:

As for the further argument that the restriction differentiates even among Polynesian people and is based simply on the date of an ancestor's residence in Hawaii, this too is insufficient to prove the classification is nonracial in purpose and operation. Simply because a class defined by ancestry does not include all members of the race does not suffice to make the classification race neutral.

*Id.*

Thus those who are in the class favored by this bill are only those with the right ancestry. The date restriction adds the arbitrary feature of excluding some members with the right ancestry whose ancestors were in the wrong place at the critical time. Far from having a class which is *not* defined by race, we have a class which *is* defined by race and which additionally discriminates, for no obvious reason, against a subclass of that racial class.<sup>3</sup> But the fundamental test is race, or ancestry as a proxy for race.

It is also noteworthy that the test of ancestry also excludes those of the wrong ancestry who were in the right place at the critical time. Residents of the Kingdom in 1893 who were not descended from an ancestor of the qualifying race apparently have no special status under this bill.

Given the racial character of the bill's definition of "Native Hawaiian" and the absence of justification for classifying Hawai'i's citizens on this ground, it must be concluded that the the bill would not survive constitutional challenge.

### **SEC. 3. UNITED STATES POLICY.**

*The United States reaffirms that-*

*(1) Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship*

**Comment:** The statement reaffirmed is inaccurate.

a. **"A unique and distinct people".** As explained in the comment to subsection 1(2) above, the comprehensive integration of Native Hawaiians at all levels of state and national life precludes the claim that Native Hawaiians today are either "unique"

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<sup>3</sup> It might be noted that the excluded group may be significant; many native inhabitants of the Hawaiian Islands departed before 1893. In her work on Hawaii's ethnic groups, Eleanor Nordyke points out:

Historian Kuykendall reports that about two thousand Hawaiian young men enlisted as seamen on foreign vessels in 1845-1847, and many of these voyagers never returned to the Islands. . . . Romanzo Adams reported absent Hawaiians as 200 in 1823, 300 in 1825, 400 in 1832, 600 in 1836, 3,500 in 1848, and 4,000 in 1850. Schmitt points out the significance of these 4000 missing men as representing almost 5 percent of the total Hawaiian population and 12 percent of all Hawaiian males of working age eighteen and over.

ELEANOR NORDYKE, *THE PEOPLES OF HAWAII* 22 (1989).

or "distinct in any other sense than the racial one, except insofar as every group within this country can claim "uniqueness" and "distinctness". Of course, nothing in this finding explains how the claimed "distinctness" or "uniqueness" of this group, identified (in this bill and in other laws) solely by race or ancestry, would entitle it to preferential treatment under law, or exempt such treatment from the constraints of the Fourteenth Amendment.

b. **"Political and legal relationship".** The United States has no "political" relationship with the group identified as "Native Hawaiians" in this bill. The claim of a political relationship is intended to bring Native Hawaiians within the constitutional rule of *Morton v. Mancari*, 417 U.S. 535 (1974), discussed in the comment to subsection 1(1) above. In *Morton*, the U. S. Supreme Court upheld an employment preference for Indians in the Bureau of Indian Affairs against an equal protection challenge that the preference constituted racial discrimination. It held that Congress had a "unique obligation toward the Indians" which was "political". It said:

The preference is not directed towards a 'racial' group consisting of 'Indians'; instead, it applies only to members of 'federally recognized' tribes. This operates to exclude many individuals who are racially to be classified as 'Indians'. In this sense, the preference is political rather than racial in nature

The "political" relationship, however, existed in *Morton* because there was a "polity"--a pre-existing political unit with a political organization--which could be "federally-recognized". There is no such entity consisting of Native Hawaiians; the only group identified in this bill as "Native Hawaiians" is one defined by race or ancestry.

For the same reason, the United States has no "legal" relationship with "Native Hawaiians" as defined in this bill, except perhaps the same legal relationship it has with all other U. S. citizens.

***(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians***

**Comment:** See comments to subsections 1(3) and 1(17) above.

***(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of-***

- (A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);***
- (B) the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4); and***
- (C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;***



**Comment:** This, of course, is precisely the question the U. S. Supreme Court declined to address in *Rice v. Cayetano*, 120 S.Ct. 1044, calling the question "difficult terrain". It said:

If Hawai'i's [racial voting] restriction were to be sustained under [*Morton v. Mancari* 417 U.S. 535, (1974)] we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting [in the Hawai'i Admission Act] the purposes for the transfer of lands to the State--and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution of 1993--has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the state a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, *The Political Status of the Hawaiian People*, 17 Yale L. & Pol'y Rev. 95 (1998) with Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 Yale L.J. 537 (1996). *Id.* at 1057-58.

These comments by the Supreme Court hardly justify the sweeping statement of this subsection concerning Congressional authority to "address the conditions of Native Hawaiians", except insofar as Congress might "address the conditions of Native Hawaiians" in a context of addressing the conditions of all the citizens of Hawai'i, without regard to race.

It should also be noted that the statutes referred to in this subsection--the Hawaiian Homes Commission Act (HHCA) and the Hawai'i Admission Act--both address only the conditions of "native Hawaiians", defined in those acts as persons with at least 50% Hawaiian ancestry, not the conditions of "Native Hawaiians" as defined in this bill. In *Rice v. Cayetano*, the U. S. Supreme Court held that the definition of "native Hawaiian" in the governing statutes of the state's Office of Hawaiian Affairs, which is essentially identical to the definition in the cited Federal statute, was racial. *Id.* at 1056.

**(4) Native Hawaiians have--**

- (A) an inherent right to autonomy in their internal affairs;**
- (B) an inherent right of self-determination and self-governance; and**
- (C) the right to reorganize a Native Hawaiian governing body; and**

**Comment:** The statements if (4)(A) and (B) are true only to the extent that they are true of all of the citizens of the state of Hawai'i. The statement in (4)(C) is accurate only in the sense that any group of individuals may organize itself for lawful purposes and establish a body to govern itself. The evident purpose of (4)(C), however is to validate the creation of an organization of Native Hawaiians which Congress can and will recognize as having a "government-to-government" relationship with the United States. For the reasons set out earlier in this document, that is not constitutionally permissible.

(5) \* \* \*

**SEC. 4. \* \* \***

**SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL, FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL AND A NATIVE HAWAIIAN GOVERNING BODY, AND FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING BODY.**

**Comment:** It is strange to read a statute establishing a commission for the verification of an individual's race for the purpose of establishing entitlement to special political status or privilege. It recalls some of the most inhuman times in our nation's history--times one might have thought we had grown beyond. See Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 Yale L. J. 109 (1998). It appears, sadly, that the lesson of history has not everywhere been taken to heart.

\* \* \*

**SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.**

(a) \* \* \*

**(b) NEGOTIATIONS.**—*Upon the Federal recognition of the Native Hawaiian governing body pursuant to section 7(d) of this Act, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing body regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of enactment of this Act to the Native Hawaiian governing body.*

**Comment:** The "lands, resources and assets" in question are the property of the State of Hawai'i. For the reasons noted earlier, there would be constitutional barriers to such a "transfer". The bill should also provide expressly for compensation to the State of Hawaii for the value of any such "lands, resources and assets" which the State might surrender.

9/6/00

Na'unanikina'u Kamalii  
322 Aoloa Street, Ph 6  
Kailua, HI 96734

August 23, 2000

Honorable Daniel K. Inouye, Vice Chairman  
Honorable Daniel K. Akaka  
United States Senate Committee on Indian Affairs  
Room 7-212, Prince Kuhio Federal Building  
Honolulu, HI 96850

Re: Testimony on Senate Bill (S. 2899) on Native Hawaiian Recognition

Vice Chair Inouye and Members of the United States Senate Committee on Indian Affairs:

Ke Akua, Na Aumakua, Na Kupuna, Vice Chair Inouye and Members of the United States Senate Committee on Indian Affairs, thank you for this opportunity to testify on this measure. My name is Na'unanikina'u Antoinette Kamalii. I am kanaka maoli and born and raised in Hawaii. My ancestors and I can be traced back over a 100 generations to the beginning of time as expressed in our creation chant, the Kumulipo. During these past few months I have also served as a member of the Native Hawaiian Community Working Group at your request and with great humility. My great grand father, Robert Napunako Boyd was a loyal subject of King Kalakaua. I imagine that he was present at the Iolani palace on the day when the flag of the Hawaiian Kingdom was lowered, later stripped into pieces and disrespected by those men whom the United States came to recognize as legitimate leaders of the new provincial government

I have read S. 2899 and I have heard the mana'o of many of our people on the island of O'ahu and on Molokai. Discussions have shaped my thinking on this bill. It is overwhelmingly clear that the United States government's role in the overthrow of the Kingdom of Hawaii was not pono. The actions of the United States have been less than honorable, especially with the taking of lands. There has been disagreement on the interpretation of facts under American law. None the less, because the United States role in the illegal overthrow of the Kingdom of Hawaii and events, including the Admissions Act, that have followed were not pono, the United States government has an obligation to make things pono or make right by our people. Many past wrongs suffered by kanaka maoli. The United States has the responsibility to address kanaka maoli concerns. We will continue to seek reparations and redress from the United States, the world court, United Nations and other international bodies and will continue to do so generation after generation because of our obligation to our na kupuna, aumakua and the aina. The Ku'e petitions in protest to the Admissions act of the United States will always be remembered by our people. The thousands of signatures of kanaka maoli relatives are very compelling.

I support the intent of S. 2899 in so far as it attempts to formally express a policy of the United States regarding the United State's relationship with the kanaka maoli. Many in the community have questioned whether they can "trust" the United States given over 107 years of relating with the United States. I have often heard the reaffirmed that the community neither wants the United States to extinguish their rights to self-determination nor have this bill prejudice kanaka maoli action for redress and reparations in the international arena. There is question whether expressly stating that a trust relationship exists between the United States and the kanaka maoli goes too far. The "beneficiaries" to this formal trust relationship have never given consent to an express trust relationship. Further, the duration and corpus are all unclear. Instead, the United States has created an implied trust, presumed from the circumstances and as indicated by several laws passed by congress for the benefit of "Native Hawaiians" which address the health, education and welfare of the kanaka maoli. These federal programs have been essential in ensuring the continued survival of our people and must not be placed at risk by Americans who challenge programs benefiting Native Hawaiians under race based American laws.

I agree that it is within the United States purview to organize itself to address the needs and concerns of the kanaka maoli. It therefore appears reasonable that an Office of Special Trustee for Native Hawaiian Affairs within the Department of Interior, that the Department of Justice designate and that a Native Hawaiian Interagency Task Force be established. Kanaka Maoli concerns are not best served under the auspices of the Bureau of Indian Affairs.

Section Seven of S. 2899 has created the most controversy at community meetings. Most agree that the bill must contain provisions to support a process that will meet all international requirements for self-determination. Some have even expressed the need for decolonization processes funded by the United States. I believe that the United States must support all efforts of the kanaka maoli to create a governing body and organic documents and must provide appropriations to ensure that the process can be carried out. However, I do not believe that the very strict process with over sight by the Secretary of the Department of Interior proposed in section seven should be imposed. Rather, I recommend that processes articulated in Section 7 are offered as a "model" only, subject to revision and comment by kanaka maoli within two years of the passage of this act. I suggest this approach with due respect to the many efforts by many of our people of many political sovereignty groups to create a governing body and organic governing documents. I note that these efforts have failed primarily because of the lack of funds by the State of Hawaii or the federal government to carry out legitimate processes.

Finally, there has never been a question as to who we are and where we came from. Much hurt will continue if the United States continues to fit us into a "box" by providing an erroneous Finding in Section 1(2). It is my understanding that the finding is necessary to implement this American Law. May I suggest that it be expressly stated that the purpose of this finding is so that the United States may recognize kanaka maoli and to implement US policy only under federal law. Thus, two findings on expressing who we are may be in order. Aloha and thank you for this opportunity to testify.

Testimony of Chief Maui Loa

August 29, 2000

U.S. Senate Committee on Indian Affairs S. 2899

U.S. House of Representatives Committee On Resources H.R. 4904

Honorable Members

- The Kalaeloa land claim is one of the largest and soundest of the hundreds of original owner land claims.
  - The Hou Lahuiohana holds the record in U.S. law with respect to the issue of reparations owed to the beneficiaries of Prince Kuhio's Act.
  - As a principal leader now for over 50 years, as the hereditary Chief, I am putting to one side my own action for loss of dominion and sovereignty and now support the proposed legislation of Senator Akaka.
  - Do not mistake my support for weakness or blind obedience to the state.
  - I fully expect to realize each claim we have through the proposed government. If it looks like the state is going to use this new government to look after its own interests and tries to muscle aside the rest of us, I will withdraw my support.
  - The best way for the state and federal governments to win and keep the trust of the Native Hawaiian people is to appoint me to sit on the Interim Governing Body where I will seek an elected seat on the permanent governing body.
  - If the proposed bill truly helps develop the economic interests of all of us it will work.
  - If it is going to be business as usual, it won't work.
1. It is said that government obeys the will of the people. For decades the state government has known to follow our legal and political work because they know we have been following the path of United States law through the Native Hawaiian landscape.
  2. They have tracked us because they knew we were following the right path.

3. Now there comes a moment in history where it appears that the state and federal governments have no place else to go so they must finally place themselves openly on the same path that we have always been on.
4. For this reason, I choose to trust the governments of the state and United States so I testify in support of this legislation.
5. Time will tell if this legislation is a move that protects the government's interests but slights the Native Hawaiians' interests. If history is any judge, because history tells us that time after time after time this is what has always happened, then the past tells us to be on guard.
6. The best safeguards are found in the opportunity the Bill presents for me and Native Hawaiian leaders who do not work for the two governments, the state and federal governments, to sit on the interim and permanent Native Hawaiian Governing bodies. We will not have to sit idly by to wait and see if history is going to repeat itself.
7. While these two governments use public funds to meet the expenses that arise because of this bill, we must personally and privately carry these expenses ourselves, and this is unfair. We have to provide the funds to meet the enrollment conditions and pay for expenses associated with politics connected to this legislation.
8. And finally, we have watched our land disappear starting when westerners first colonized our country. Now we are going to govern ourselves directly with the United States. This is being done to protect the interests of the state in Native Hawaiian affairs. But not only state government agencies have Native Hawaiian land that once belonged to the original families. Not only Missionary Trusts have Native Hawaiian land that needs to be governed by Native Hawaiians directly with the United States. It is only when all Native Hawaiians are fully and directly included and empowered equally in this new government to government legal and political relationship that we will be able to recognize this legislation as justice. If it is not, we will continue to fight for justice in the courts, in congress, in corporate board rooms, in the council chambers of our native American brothers, in the media, on the roadsides and beaches of our former country, forever, if necessary.

Respectively Submitted,

Maui Loa Hereditary Chief Kalaeloa Kalakaua Kawaiolo  
Lono Makahiki Ehu Hou Lahuiohana

Church of Hawaii Nei  
Made by native Hawaiians  
Hawaiian Ethnic Art Museum  
Umi (strong) Community Association  
Hou Kula School  
Native Hawaiian Ohana Alliance  
Hou Hawaiian Computer-Tech and Art School  
Native Hawaiian Trading Post  
Maui Pohaku Loa Statue

P.O. Box 459  
Haleiwa, Hawaii 96712  
(808) 638-7841

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This is supplemental to Chief Maui/Loa's testimony on U.S. Committee on Indian Affairs S. 2899 of August 28, 2000 and concerns specifically the Draft Report of the Department of the Interior and the Department of Justice dated August 23, 2000 and titled "From Makua to Makai: The River of Justice Must Flow Freely".

*Mauka*

1. Recommendation 1 of the Draft Report states "...that the Native Hawaiian people continue to maintain a distinct community and certain governmental structures and they desire to increase their control over their own affairs and institutions". The use of the word "institutions" can be interpreted to exclude other than "certain governmental structures". There are in the "distinct community" of Native Hawaiians several diverse, established and recognized entities that consider themselves to be self-determined independent governments. This diversity is consistent with Tribal law.

2. A codification of state interests via the Akaka Bill is not the same as a new ability "to increase their control (over their own affairs and institutions)". A way to recast this misperception so as to encompass equally non-state government "institutions" is to have recognition by congress of the new government include de facto recognition of existing non-state Native Hawaiian governmental structures, both tribal law and monarchy era law Native Hawaiian entities. These include Ka Lahui, Hou Lahuiohana, Independent Nation of Hawaii, Sovereign Nation of Hawaii, Kamehameha Schools Bishop Estate Missionary Trust, and others, as well as the state's Commission of the Hawaiian Homes Act, which is, we assume a "certain governmental structure"? (The fate of the state's Office of Hawaiian Affairs, a quasi-government, is in question at the time this is being written).

3. To include Native Hawaiian monarchist faction self-determined governmental structures by incorporating these as now being recognized under the new government leaves no one out while acknowledging the realities of diversity. International issues are not involved through recognizing Native Hawaiians who choose to organize themselves along monarchy era lines instead of along United States tribal law lines at this time. The democratic structure of the new representative government is the United States' half of the equation. The Native Hawaiians' half of the equation is recognition of the way things already actually exist. To only recognize the state's "institutions", even those with Native Hawaiians, is not justice since it is not fair to other than "certain (state) governmental structures". The state's Native Hawaiian formulated governmental structures should be recognized equally along with the rest of the Native Hawaiian's organizational forms because that is recognizing reality. Were the state's delegated authority to not exist, these other Native Hawaiian forms of self-government would still exist. In the future absence of the state in Native Hawaiian self-government, how does it strengthen Native Hawaiian self-determination to not include in a new government the established forms of self-government the Native Hawaiian has himself originated? And if the state were not involved as the interim delegated authority of the United States, would the United



States be recognizing the Native Hawaiian? It appears to be the intention of the United States to recognize the Native Hawaiian but that the state has placed itself in the middle. What else can the United States do but act on its intention in a manner that does not place the state's self-interest above that intention? The United States cannot go along with what the state will claim; namely that certain Native Hawaiian groups elected to not include themselves in the new government so therefore they have no standing. In a democratic state, government is representative of everyone, even those who appear to not choose to be represented. The danger of this exclusionary possibility of the Akaka Bill is a threat to its legitimacy that could be the loose thread that unravels the whole structure.

4. An issue of substantial judicial review has been the inability of the state to represent the Native Hawaiian interests separately from the state's own interests. On the part of the state, there is no consciousness, or policy, that these are two distinct areas. It is not justice to strengthen only the state because to do so results in weakening the Native Hawaiian. Isn't the idea to strengthen the Native Hawaiian not the state so that the Native Hawaiian can attain through self-determination an ability to manage his own affairs, independent of the state? So, the legislation should expand on what an "institution" is to encompass every institution not only "certain (state) governmental structures". And should name by name every diverse entity and make thereby the new government represent these entities and their members. They earned the right to be represented by their existence. They "enrolled" when they testified. The new government should reach out to all those who need representation and should not expect those who are not represented to carry the whole burden of reaching out to the governments of the state and the United States again. Did not the testimonies include the identities of these diverse entities? The United States must look past the state's myopia and see the reality of diversity. It is after all in the failure of the state's (institutional) governmental structures that the dissatisfaction has arisen. Is the United States now going to codify the failures of the state in congress and if so is that justice? (The state's Department of Hawaiian Homelands failed to settle all the eligible native Hawaiians of the blood on homesteads set up by the Hawaiian Homes Act of 1921 and the state failed to use revenues from the public lands in trust from the United States for the "betterment of the conditions of native Hawaiians". A remedy is that the President of the United States could under the authority established in the HACA order that the Secretary of the Interior take Native Hawaiian land directly into trust as a reservation, or homeland (lahuihaneaina) of a Native Hawaiian tribal government. That Tribal government could perform all the duties and responsibilities that the proposed new government will undertake, independent of the control of the state. This is a remedy preferred by the Native Hawaiian given the past inability of the state to manage its delegated responsibility in a way that is fair to the Native Hawaiian).

5. The term "self-determination" must be defined in detail by reference to U.S. Tribal law in Senator Akaka's bill. Spell out in detail,

a,b,c,d, etc., what "self-determination over their own affairs within the framework of Federal law, as do Native American tribes" means. In doing so, no one can argue later that these legal rights are not the intent of the Akaka bill.

6. The recommendation appears to believe that the Native Hawaiian already exercises "self-determination over their lands, cultural resources and internal affairs", but lacks a recognized "government to government" relationship with the United States. Once again, the state is merely imposing itself as a stand in with delegated authority for the actual Native Hawaiian not because the state is interested in the Native Hawaiian's interest but because the state is interested in controlling its own interests insofar as the Native Hawaiian may be involved in those interests. The United States could recognize a "Tribal Commission" as the new interim governing body that represents Native Hawaiian interests and which could include a component of state government wherein that component would represent the state's own Native Hawaiian interests. This is preferable to the Native Hawaiian interests playing an inferior role to the state in such a new government to government relationship. This Tribal Commission could take the state's administrative share of federal funds allocated by congress for Native Hawaiian programs.

7. It is not a reality that the Native Hawaiian exercises self-determination over his lands, cultural resources and internal affairs to the fullest extent permissible in United States law. There are no special rights in state law that allow the Native Hawaiian to do so and up to the Akaka Bill, the United States has never stepped up to the plate in Enforcement of that right to self-determination in Federal law. The state and city and county determine how a Native Hawaiian may use land. The state has never treated any Native Hawaiian self-government body in fact as different from anyone else except for its own creation, the quasi-government Office of Hawaiian Affairs, a state agency, which the state utilized to attempt to settle in a self-serving way its liabilities resulting from breaches by the state of the HHCA and the 5f of the Admissions Act.

8. Congress could recognize a Confederated Commission of self-determined Native Hawaiian entities incorporated as a self-government of the Tribal Native Hawaiian people of the United States for the purpose of a direct government to government political relationship. There is no requirement in federal law that this body be a state government body. It is not true that in order to protect the United States only a state Native Hawaiian government entity can carry out a direct government to government political relationship. A non-state Native Hawaiian government can and would protect the United States' interests insofar as Native Hawaiian issues are concerned. The fact that the state's involvement in Native Hawaiian affairs is now so deep that it is virtually impossible at present to separate the two interests, the state from the Native Hawaiian interests, is not an impediment to the United States separately recognizing a Native Hawaiian government independent of the state. It would only mean that there would be two governments in

Hawaii to deal with concerning United States' interests. That would be consistent with continental Tribal government to government realities. Now that Bishop Estate has seen the wisdom of the protection of its assets and land provided by United States Tribal law, those Hawaiian organizations advocating for secession or restoration of the monarchy that were directly or indirectly funded by Bishop Estate interests will wither in time and disappear. So it is not possible for the state to represent to the United States that the United States needs the state to protect the United States from secessionist Hawaiian factions. Furthermore, the Native Hawaiian tribal leaders are knowledgeable about United States interests in Hawaii and ready to accommodate those interests through any means necessary. (Bishop Estate manages a multi-billion dollar Missionary Hawaiian trust so already has all the governmental skills any tribal body self-government could ever desire to have. It is perfectly moral, legal and just, as well as historically correct, that Bishop Estate obtain the protection for its assets that the United States provides to its indigenous people through United States Tribal law. It is the hope of every other Native Hawaiian entity, none anywhere near as financially powerful or politically powerful as Bishop Estate, that the shift of Bishop Estate to the Tribal law path means that those Hawaiian entities who have long been following the Tribal path, like Chief Maui Loa's own Hou Lahuiohana of the Kalaeloa Kalakaua Kawaihoa Lono Makahiki Ehu Hou clans, will obtain at least as much protection and benefit from the shift for their own assets, however small and weak they may be in comparison to the massive assets of Bishop Estate).

9. The United States has an obligation to revisit the trust it set up in the Admissions Act concerning the disposition of the crown lands. The crown lands are aboriginal lands of the Native Hawaiian and all clan ancient land claims involve these lands. The United States ought to make a new, direct arrangement with a new Native Hawaiian self-government concerning the disposition of the crown lands that satisfies the dispossessed chief families and the so-called common people alike. The state has a conflict of interest concerning disposition of the crown-public lands vis-a-vis the United States. The state controls all the crown lands while the Native Hawaiian has control over none. (The United States intended to protect the body of crown lands it allocated to Hawaiian homelands usage through prohibiting its sale and a method the United States choose was to only lease the land to its native Hawaiian occupants).

10. The Akaka bill seems to absolve the state of obligations arising from its breach through reaffirming the state's delegated authority for the welfare of Native Hawaiians. While the Akaka bill appears to let the state wiggle off the hook, the issue of liability for the United States on this matter is unresolved in the Bill. It is for this reason that the United States should take this as an opportunity to revisit the Admissions Act with the intention to learn from the mistakes and this time fulfill the original intentions of the United States with respect to the dispossessed Native Hawaiian people. The United States intended that the disposition of the crown-public lands would compensate the

Native Hawaiian for loss of his land and nation as well as fund infrastructure improvements and settlement expenses of Hawaiian homelands. Nevertheless, the state has been found in breach and the state acknowledged its own liability when it offered to make a settlement through its own constitutional and statutory scheme, the quasi-government over Native Hawaiians, the state agency Office of Hawaiian Affairs. How, if the state has been proven to be adversarial to the Native Hawaiian, can the state now become the Native Hawaiian is the unanswered question of the proposed new government?

11. The ceded lands of the HCCA were taken from the crown lands and the 100,000 acres that the state proposed to give title to OHA of came from the crown lands. The sum in dollars proposed by the state to OHA in settlement was based on the revenues of the crown-public lands. At the time of his death, David Kalakaua, Chief Maui Loa's great grandfather, an elected monarch, was in the process of returning lands taken from the Chief families of the bloodline in the earlier maheles. This process was cut short. Had the process been completed, there would be no dispute over the crown lands because those lands originally taken away from the Chief families in the maheles by Kamehameha III would have been returned to their original owners and the crown lands would not have become government lands, or, public lands.

12. The state seeks to convert certain of these wrongfully taken crown lands into national parks. Some public land was taken by the United States in WW II for military use. Who has a claim on what public lands is a well known fact amongst the families affected and their testimony should be accepted, and then the identified lands should be returned and then protected by also being placed in trust to the United States via the new Native Hawaiian government being now established. In circumvention of GSA rules that apply in all other states, when crown lands occupied by the United States are made surplus, even when an original owner claims it, the land automatically goes to the state as the delegated authority of the United States. (Pollution of land and water issues are connected to this in terms of who is going to restore the land and water to healthy pre-military use conditions). All Native Hawaiian land, right down to the smallest kuleana, must be permitted to be placed in trust by private owners and equally protected, along with state controlled "Native Hawaiian" land, as land subject to self-determination governance of the Native Hawaiian people, via their Tribal Commission, or, whatever the term applied to the new interim and permanent government enabled by the Akaka bill. In total, all such land could be known as the Lahuiohanaaaina of the Sovereign Nation of Hawaii.

13. It is Chief Maui Loa's experience, and the experience of all Native Hawaiians, that there are discriminatory attitudes operating as governmental policy, as administrative regulations and as city and county and state laws, that are aimed at Native Hawaiians. These can be exposed and rooted out through judicial means. Or, the Native Hawaiian government being newly established can systematically examine these and work with the state legislature and city and county governments to repeal these.

14. To pursue this objective will isolate the differences that separate the state and the Native Hawaiians. It is an absolute certainty that some Native Hawaiian entity will pursue a judicial remedy of this government discrimination of the Native Hawaiian people. A question for the delegation concerning this is whether or not the delegation wishes to include the task of rooting out these discriminatory laws, policies and regulations in the initiatives of the Akaka bill? The United States has studied one or two areas of state and city and county law wherein government policy discriminates against Native Hawaiians. This is an opportunity for the United States to relieve the Native Hawaiian of the burden this places on him through directing the delegation to rectify these wrongs on their own in the state legislature, to bring local policy, law and regulations up to par with other states concerning their indigenous people. For the United States to simply allow the state to codify the state's current positions, and the city and county positions across the state, as in the state's DHHL current position, or the state's current OHA position, is to simply codify not remedy the state's wrongful acts against Native Hawaiians.

Respectfully Submitted,

*Maui Loa*

CHIEF MAUI LOA

*FREDERICK NICHOLAS TRENCHARD*

And Professor Frederick Nicholas Trenchard, Senior Advisor to Chief Maui Loa



## NATIVE HAWAIIAN LEGAL CORPORATION

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YEARS OF  
SERVICE TO  
THE COMMUNITY  
1974 - 1999

Testimony of Mahealani Kamau'u, Executive Director  
and Member, Native Hawaiian Community Working Group  
on Senate Bill 2899  
August 29, 2000

My name is Mahealani Kamau'u, Executive Director of the Native Hawaiian Legal Corporation, a public interest lawfirm which asserts, protects and defends *kanaka maoli* rights to land, natural resources, and related entitlements. I have been active with the Hawaiian political movement since 1970, beginning with the Kalama Valley eviction struggle, and have been with this organization 22 years.

I support the enactment of Senate Bill 2899. In light of the U.S. Supreme Court's decision in Rice v. Cayetano, it is essential to clear up any existing doubts that Congress has recognized *kanaka maoli* as among the indigenous peoples with whom it has a special relationship and whose continuing sovereignty it acknowledges.

The threat of litigation has made it necessary to move forward with such legislation more rapidly than would be desirable in an ideal world. Much controversy exists in the Hawaiian community as to the procedures by which a Native Hawaiian Governing Body should be created and as to the precise form such a body should take. Senate Bill 2899 has been proposed in response to a clear need for expedited action. It does not mandate the form that body will eventually take, but instead leaves that to be decided by *kanaka maoli*.

- I. **Senate Bill 2899 should be amended to provide that the Native Hawaiian Governing Body be empowered, without the need for additional legislation, to hold land in trust as a sovereign with powers of regulation and taxation equivalent to that held by other federally recognized indigenous governments.**

Senate Bill 2899 does not constrain the discretion of the Department of

*Services made possible with major funding from the Office of Hawaiian Affairs.*

Maka. Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.

the Interior in approving or disapproving the form which Native Hawaiians may ultimately select for the Native Hawaiian Governing Body. This grant of power to the Department of the Interior is a matter of considerable concern because it could prevent the Native Hawaiian Governing Body from ever holding lands as a sovereign (i.e., with regulatory and taxation authority not subject to the power of the State of Hawaii) rather than as mere private landowner. The relevant language is found in Section 7 of the proposed legislation. Section 7(c)(7) states that the Native Hawaiian Governing Body shall be empowered to "(A) exercise those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous, native people of the United States[.]"

Section 7(e)(1) states that this entity "shall have the same status under Federal law when acting in its corporate capacity as the status of Indian tribes that have been issued a charter of incorporation under the authority of section 17 of the Indian Reorganization Act (25 U.S.C. 477)," and section 7(e)(2) states that the entity's charter may authorize it to "exercise the power to purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase lands and to issue an exchange of interests in corporate property [etc.]"

This language does not explicitly empower the Native Hawaiian Governing Body to hold land in its sovereign capacity with the same regulatory and taxation authority over its lands now exercised by other federally recognized indigenous governments; neither does it expressly preclude the exercise of such power, however. The resolution of this question is critically important in light of the U.S. Supreme Court's decision in State of Alaska v. Native Village of Venetie, which held that, with regard to lands held under the authority of the Alaska Native Claims Settlement Act, Alaska Natives lack such rights and are subject to the full authority of the State of Alaska in the same manner as any private landowner. I cannot support legislation which does not allow the Native Hawaiian Governing Body to exercise sovereign powers with the same regulatory and taxation authority over land now exercised by other federally recognized indigenous

governments. My endorsement of the proposed legislation is given with the understanding that it does not contemplate the creation of an entity unable to exercise such powers. To remove any uncertainty on this point, I urge that Senate Bill 2899 be amended to provide that the Native Hawaiian Governing Body be empowered, without the need for additional legislation, to hold land in trust and as a sovereign with powers of regulation and taxation over that land equivalent to those held by other federally recognized indigenous governments.

- II. **Senate Bill 2899 should be amended to make it clear that its provisions will not operate to extinguish *kanaka maoli* rights to pursue sovereignty and self-determination under international law.**

*Kanaka Maoli* never relinquished their sovereignty or rights to their national lands and resources. Their overwhelming and unanimous opposition to annexation by the U.S. is well-documented. Furthermore, *kanaka maoli* have never had an opportunity to choose between various forms of government as provided by international law. Senator Akaka, Senator Inouye, Counselor to the Secretary of Interior Robert Anderson, as well as Jacqueline Agtuca, Acting Director, Office of Tribal Justice of the Department of Justice, have publicly stated that the proposed legislation does not foreclose pursuit of other options under international law. I ask that this bill include explicit language to make it clear to the *kanaka maoli* people that federal recognition will not foreclose pursuit of other options available under international law.

- III. **The process outlined in Section 7 should be amended to provide for a native initiative with the least amount of interference by the Department of Interior as possible.**

Although no single *kanaka maoli* sovereignty initiative has yet achieved consensus, our over century-long struggle and repeated attempts to restore our government should not be dismissed. This bill should provide funds to assist existing sovereignty groups to educate and place before *kanaka maoli* their respective plans for achieving self-government. I believe it is possible to



accomplish this within the framework of this bill.

I support the process outlined in Section 7 with the following exceptions:

1. The bill does not indicate how the nine-member commission, which initiates the process, shall be created. I propose that the Nine-Member Commission, which oversees registration and certification of an initial roll of voters, be nominated by *kanaka maoli* organizations and appointed by the President of the United States.
2. I believe certification of eligibility to participate in the restoration of the self-governing entity should be by self-sworn affidavit, subject to administrative and/or court challenge. The requirement to provide extensive genealogy documentation may be impractical or even impossible, as a matter of availability and cost. Repositories of genealogical information are already inundated beyond their capacity to respond to requests by the public. Furthermore, the Bureau of Vital Statistics within the State Department of Health currently charges \$10 per certified record. With each individual typically requiring many certificates to document their genealogy, this process will be extremely cost-prohibitive. If the self-sworn affidavit, which already enjoys wide acceptance in the *kanaka maoli* community, is inadequate to meet requirements of the federal recognition process, funds may be required to shore up clerical support at the Bureau of Vital Statistics or to acquire and employ alternate technology to assist *kanaka maoli* with their genealogy documentation needs.

This concludes my testimony. I wish to incorporate the attached paper, a reflection of the concerns raised by *kanaka maoli* in community informational meetings held throughout the islands, as part of my testimony. At a later time, I will also be submitting a summary of actual comments received. Thank you for this opportunity to testify.

## KANAKA MAOLI TROUBLED BY AKAKA BILL

by Mahealani Kamaau

August 29, 2000

Incongruous, ill-fitting and duplicitous is how Senate Bill 2899 is regarded by many *kanaka maoli* who have attended recent community meetings.

They feel the proposed legislation is too far out of alignment with their history, culture and political aspirations.

They believe it represents too heavy-handed an attempt at retrofitting them into federal Indian law and policy.

They are convinced it will rob them of future options to pursue self-determination under international law, in spite of repeated reassurances by Senator Akaka and explicit language in the bill that it will not.

They believe the bill is a conspiratorial attempt by the U.S. government to co-opt the indigenous Hawaiian sovereignty movement.

This reaction is a symptom of the greater disjuncture, the greater failure of communication, the greater and increasingly inexpressible alienation that many Hawaiians feel.

Added to their social, economic and political troubles, the hostile *Rice* decision and the actions taken by those emboldened by that decision only make matters worse.

*Kanaka maoli* critics of the bill are curiously allied with non-Natives who oppose it. These latter believe the bill will further divide citizens of Hawai'i by providing for the establishment of a Native Hawaiian indigenous government and protection of programs which would otherwise be impermissible under the U.S. Constitution.

Those who believe the bill will further divide our community fail to understand that a great chasm already exists which is becoming increasingly difficult to bridge for the U.S.' failure to timely reconcile historic wrongs.

Senate Bill 2899 has forced healthy, if discomfiting, public discourse which would otherwise be taking place exclusively among *kanaka maoli*.

If the U.S. truly seeks the reconciliation with *kanaka maoli* called for in the Apology Resolution, it must not delay in providing the necessary support, as required under international law, for *kanaka maoli* to explore, without duress, all available political options.

*Kanaka maoli* have not forgotten that their nation was taken and their lands stolen in contravention of America's own laws.

Can anything be more divisive to our community than the shared knowledge of a great wrong committed, over a century ago, which has caused untold and disproportionate suffering to one segment of its population, and which has yet to be rectified?

*Kanaka maoli* are increasingly bitter and angry at those who continue to deny the truth of their history and who insist that nothing wrong happened. As their bitterness and anger increases, the likelihood of reconciliation becomes increasingly remote.

Thus many of them have stated at public meetings that they "would rather 'ai *pohaku*, eat stones, than accept America's proposal", echoing a well-known sentiment attributed to Queen Lili'uokalani.

Some have ominously suggested a call to armed resistance is not far away.

Senate Bill 2899 is the Hawai'i congressional delegation's response, ostensibly to the U.S. Supreme Court's decision in *Rice v. Cayetano*, which struck down OHA's native-only voting process.

*Rice* paves the way for elimination of all *kanaka maoli* programs, *public and private alike*, including but not limited to language immersion, community-based health centers, Hawaiian Homelands and the infrastructure and housing on those trust lands, Kamehameha Schools, Queen Lili'uokalani Trust and Lunalilo Trust.

As a counter measure, Senate Bill 2899 proposes a mechanism for re-establishing Native Hawaiian governance under federal law.

Protection would issue from federal recognition, affirming the existence of a political relationship which would operate to defeat race-based challenges under the U.S. Constitution.

As discussed above, however, many *kanaka maoli* reject outright the suggestion that their political relationship with the U.S. is or should be the same as that of Native American tribes; further, they believe *kanaka maoli* should not be running scared at the thought of losing programs, but should demand immediate restitution from the U.S. for its theft of their national lands and sovereignty.

In their view, *kanaka maoli* should not be begging for programs and entitlements, but should be demanding just compensation for crimes committed against the Hawaiian people.

I support the bill because it will protect Hawaiian programs, result in formal recognition of Hawaiians as a body politic, and does not foreclose future options to pursue sovereignty and self-determination.

I support the bill because I am unwilling to abide the suffering that is here, present, today, and for which the long-term goal of independence offers no promise of relief.

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Mahealani Kamauu is Executive Director of the Native Hawaiian Legal Corporation and a member of the Native Hawaiian Community Working Group which recently held a series of community informational meetings on the Akaka bill.

**WRITTEN TESTIMONY OF EMMETT E. LEE LOY, ATTORNEY AT LAW**  
**A NATIVE HAWAIIAN AS DEFINED IN THE HAWAIIAN HOMES**  
**COMMISSION ACT OF 1920,**  
**BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS**  
**AND UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON RESOURCES**  
**HELD IN THE HAWAIIAN ISLANDS**  
**FROM AUGUST 28 THROUGH SEPTEMBER 1, 2000**  
**ON THE ISLAND OF OAHU, WEDNESDAY, AUGUST 30, 2000, IN THE**  
**NEIL BLAISDELL CENTER, PIKAKE ROOM, HONOLULU, HAWAII**

Aloha and welcome to Hawaii, Honorable and respected Chairman and Members and Staff of the U.S. Senate Committee on Indian Affairs, and Honorable and respected Chairman and Members and Staff of the U.S. House of Representatives Committee on Resources.

**I. INTRODUCTION**

My name is Emmett E. Lee Loy, and I am a federally-recognized native Hawaiian as defined in the Hawaiian Homes Commission Act ("HHCA") of 1920,<sup>1</sup> and a beneficiary of the Admissions Act of 1959,<sup>2</sup> Section 5(f) land trust. I am an attorney licensed to practice in the U.S. Federal District Court of Hawaii and before the Supreme Court of the State of Hawaii.

I am a graduate of the University of Colorado (CU) School of Law (1991), where I studied Federal-Indian Law, advanced Federal-Indian Law, seminar in Federal-Indian Law as well as Federal-Public Land law directly under Professor Charles F. Wilkinson, considered to be among one of the most preeminent scholars in the field of Federal-Indian Law. I also studied Water Law under Professor David Getches and New Zealand Federal-Maori Law, the Treaty of Waitangi of 1848, under Professor Richard Collins, and the Native

<sup>1</sup> Pub. L. No. 67-34, 42 Stat. 108 (1921) ("HHCA"), i.e. "not less than one-half part of the blood of the races of people inhabiting the Hawaiian islands previous to 1778."

<sup>2</sup> Pub. L. No. 86-3, 73 Stat. 4, Section 5(f) (1959).

American Religious Freedom Act, under Professor Vine Deloria.

I am a U.S. Army veteran; former intern with the U.S. Senate Select Committee on Indian Affairs in Washington D.C.; former law clerk with the U.S. Department of Justice Indian Resources Section in Washington, D.C.; former law clerk with the Native American Rights Fund (NARF) in Boulder, Colorado; former Deputy Public Defender for the State of Hawaii; and, now in private law practice seeking the full implementation of both the HHCA of 1920, as well as the Section 5(f) land trust of the Admissions Act of 1959, for native Hawaiians as defined in the HHCA of 1920.

I stand in opposition to S2899, the so-called "Federal-Recognition Bill," because native Hawaiians have already been federally recognized under the HHCA of 1920, and I oppose S2899 for other reasons set out below.

For the last 80 years, the native Hawaiians have been federally recognized and S2899 is fatally flawed as drafted, because it presumes that native Hawaiians wish to diminish their blood quantum requirements of such federal recognition codified in the HHCA of 1920.

Instead of referring to it as a Federal-Recognition Bill, S2899 really ought to be called the "Lower the Blood Quantum Down to Nothing, Without Asking Those Native Hawaiians With An Interest At Stake Subject To Being Diminished Under The HHCA of 1920, Bill."

The Hawaiian home lands set aside by Congress in the HHCA of 1920, and the Section 5(f) lands and revenues are all we native Hawaiians (50% plus blood) have.

If you pass this S2899, you will be treating native Hawaiians differently from all the other Indians protected under the Indian Reorganization Act of 1934 and S2899 is a denial of equal protection.

The Indian Reorganization Act of 1934 defined "Indians" not only as "all persons of Indian descent who are enrolled members of any recognized [in 1934] tribe under Federal jurisdiction", and their descendants who then were residing on any Indian reservation, but also "all other persons of one-half or more Indian blood." 25 U.S.C.A. Section 479.

And, if you are going to pass a S2899 that says native Hawaiians means anybody, you will be treating the native Hawaiians as defined in the HHCA of 1920, differently than all the other Indians: You will be taking away the native Hawaiians right to control their Hawaiian home lands and their resources.

This bill is discriminatory because you would not do this with any other Indian tribe, nor would Congress dare to do this with the Mississippi Choctaws that were dealt with in the case of U.S. vs. John, 437 U.S. 634, 98 S.Ct. 2541, 57 L.Ed.2d 489 (1978).

To illustrate, are you telling me that you would allow anybody with any amount of Navajo blood to vote to move the not less than one-half Navajo Indian bloods's off of their Indian reservation?

Are you telling me that if an Indian tribe in Oklahoma had found some oil on their reservation, that Congress would pass a Statute like S2899, and allow anybody with a drop of that Indian tribe's blood to suddenly become members of that Indian tribe? And, in turn, allow these newer, so called, members to steal the not-less than one-half Indian tribal members oil?

That is what we are dealing with in S2899. In effect, Akaka wants anybody with one drop of Hawaiian blood to be allowed to kick the not-less than one-half part native Hawaiians off of their Hawaiian home lands and to steal the Section 5(f) revenues. This is what the State of Hawaii officials tried to do when they set up the State's Office of Hawaiian Affairs (OHA) in 1978.

II. THE HAWAIIAN HOMES COMMISSION ACT OF 1920 HAS ALREADY EXTENDED FEDERAL RECOGNITION TO NATIVE HAWAIIANS AND S2899 IS A WEAK EFFORT TO DUPLICATE IT

Under the Hawaiian Homes Commission Act (HHCA) of 1920, a native Hawaiian is defined as "not less than one-half part of the blood of the races of people inhabiting the Hawaiian Islands previous to 1778." The purpose of the HHCA of 1920 is to rehabilitate native Hawaiians. What does rehabilitate mean? The Courts have time and time again interpreted rehabilitation to mean self-determination.

This device of self-determination is already in place, it only needs to be implemented by State of Hawaii officials. However, ever since the State of Hawaii undertook a sacred compact in Section 4 of the Admissions Act of 1959 to administer the HHCA of 1920, State officials have willfully failed to implement the HHCA of 1920 and purposefully frustrated Congress' mandate to allow native Hawaiians to organize as Hawaiian Homestead Association under the HHCA of 1920, and to exercise self-determination pursuant to the terms and conditions of the HHCA of 1920.

(For reasons that will become clearer as this testimony develops, State of Hawaii officials want to lower the blood quantum down to nothing because of the votes they can milk from persons claiming to be native Hawaiian with only a drop of Hawaiian blood, including those with one ancestor out of 500.)

A. Intentional Effort to Undercount and Native Hawaiians as defined in the HHCA of 1920

Today, more than 30,000 of these qualified native Hawaiian as defined in the HHCA of 1920, native Hawaiian (50% plus blood) applicants, continue to languish on the State of Hawaii Department of Hawaiian Home Lands (DHHL) waiting list, some of whom have now waited for more than six (6) decades.

Countless more native Hawaiians, as defined in the HHCA of 1920, have died while waiting for their Hawaiian homestead.

Many more have been dissuaded from signing up for a homestead lot, due to the State of Hawaii officials purposeful delay in delivering homesteads to beneficiaries identified under the HHCA.

It is through this deliberate effort to delay HHCA homestead leases from being issued, State of Hawaii officials have inflicted great harm upon the beneficiaries, producing a cruel effect of preventing the native Hawaiians from organizing pursuant to the terms of the HHCA of 1920.

And, still many more native Hawaiians continue to compile their documentation and are in process of becoming eligible for a Hawaiian homestead lot, but are currently not counted as beneficiaries on the DHHL waiting list.

In other words, the 30,000 applicants on the DHHL waiting list is an undercount of native Hawaiians, as defined in the HHCA of 1920.

B. Senator Akaka's Bill No. S2899 misrepresents the number of Native Hawaiians as defined in the HHCA

Senator Akaka's Bill No. S2899, misstates the number of native Hawaiian applicants waiting for their Hawaiian Home Lands, as being only 18,000.

This estimate of 18,000 native Hawaiians (50% plus blood) is completely false and undercounts as well as underrepresents the interest of the qualified beneficiaries under the HHCA of 1920.

I call upon the independent minded on these Committees and those in Congress not present here today, to do your duty and investigate S2899's misstatement and to contact State of Hawaii Department of Hawaiian Home Lands Application (DHHL) Branch officials at 1-808-586-3830 and ask them how many native Hawaiian applications they have on file; applicants waiting for their lands. While there, ask DHHL officials how many native Hawaiians have died while waiting for their leases.

This intentional effort to mislead the U.S. Congress into believing that there are "only" 18,000 "not-less than one-half" native Hawaiians on the waiting list, is part of the continuing pattern and practice of those who wish to steal the undelivered Hawaiian Home Lands from the beneficiaries recognized under the HHCA of 1920.

Their argument is this: since there are so few qualified native Hawaiians, one day we will all die off, so they may as well lower the blood quantum.

Do not buy into that bogus argument.

With so few qualified native Hawaiians left, it should be the State of Hawaii's officials TOP priority to allow these real-deal native Hawaiians (50% plus blood) to receive their lands and to exercise self-determination under the provisions of the HHCA of 1920.

Yet another way to look at this is that the United States Congress already made a promise to the native Hawaiians



under the HHCA of 1920, and Congress should insure that it keeps its first promise and fulfill the mandate of the HHCA of 1920 first, before it embarks on an uncharted course into dangerous waters with S2899.

III. THE DEFINITION OF A NATIVE HAWAIIAN AS DEFINED IN THE HHCA OF 1920, HAS BEEN DEFENDED BY THE BENEFICIARIES RECOGNIZED UNDER THE HHCA SINCE 1920, AND AS SUCH, IT HAS BEEN ADOPTED BY ESTOPPEL BY THE BENEFICIARIES OF THE HHCA OF 1920

This definition of a native Hawaiian, as defined in the HHCA of 1920, has been **DEFENDED** by beneficiaries of the HHCA of 1920, since the inception of this Act of Congress.

This definition has been under attack ever since the State of Hawaii's creation of the Office of Hawaiian Affairs (OHA), following the State of Hawaii's unlawful intrusion into exclusive federal domain, when the State created a brand new class of citizens called "Hawaiians" with no minimal blood quantum in 1978.

Having resisted many attacks before, S2899 launches another attack upon the recognized beneficiaries with S2899's no minimal blood quantum definition of a native Hawaii found in Section 2 of the proposed legislation.

As such, S2899 is fatally defective, because it threatens the yet to be delivered benefits to the native Hawaiians still waiting for their Hawaiian Home Lands.

Please observe that previous efforts to diminish the blood quantum requirements and thus, diminish the yet to be delivered benefits of homestead lots for original applicants, have been successfully **RESISTED** by the beneficiaries of the HHCA.

Congress has not lowered the blood quantum requirements for the original applicants under the HHCA, because these native Hawaiians have asked Congress NOT to lower the blood quantum for the original applicants, for the past 80 years.

Research prior Congressional hearings on this subject and you will be led to the inescapable conclusion that by such a long record and vigorous defense of this definition of a native Hawaiian, as defined in the HHCA of 1920, this

definition has been **ADOPTED by ESTOPPEL** by the native Hawaiians as defined in the HHCA of 1920.

- A. The State of Hawaii is composed primarily of and run by no minimal blood quantum Hawaiians

Take notice that the State of Hawaii is composed of, and run by, persons who do not qualify under the HHCA. These people have concocted a number of fictions about the definition of a native Hawaiian as defined in the HHCA of 1920, in order to undercut the effort of native Hawaiians to organize under the HHCA of 1920.

S2899's definition of a native Hawaiian with no minimal blood quantum, was created by these types of people that, by and large, do not qualify under the HHCA of 1920.

As drafted, S2899 poses a direct threat to the undelivered benefits conferred upon native Hawaiians under the HHCA of 1920, as well as poses a direct threat to the class of beneficiaries recognized under the HHCA of 1920.

- B. Representing The State of Hawaii and Telling lies about Blood Quantum

1. The first lie is that it was the United States Congress that imposed the "not less than one-half" blood quantum requirement in 1920.

Contrary to manipulated opinion, the blood quantum was not imposed by the United States Congress, because I have proof that the native Hawaiians had a blood quantum under the Laws of the Kingdom of Hawaii---60 years prior to the HHCA of 1920.

Enacted on May 17<sup>th</sup> 1859, the Civil Code of the Hawaiian Islands in Title 6, Chapter 32, Section 1454, limited the descent of lands alienated in the Kuleana Land Grant Acts of 1850-54, to heirs of not less than one-half "... blood of the such ancestor."

Put another way, 60 years prior to Congress "imposing" the not less than one-half blood quantum for persons to receive lands under the HHCA of 1920, the Kingdom of Hawaii had a blood quantum for persons to receive lands alienated in the Kuleana Land Grant Acts of 1850-54.

The feeble effort of S2899, fails because of the omission of the material fact that we have defended the definition ever since it was articulated by Congress in 1920.

2. Another way of looking at this is that although Congress first articulated the blood quantum under its laws of the United States with passage of the HHCA of 1920 into federal law, the definition has been **RATIFIED** by the beneficiaries of the HHCA of 1920, by virtue of their long and vigorous defense of such blood quantum.

The only people that oppose the definition of the HHCA of 1920, are those who do not qualify under the HHCA of 1920, but would like to.

If Senator Akaka wishes to lower the blood quantum for native Hawaiians as defined in the HHCA of 1920, he should ASK the native Hawaiians as defined in the HHCA of 1920 first, and not come up with this bogus ploy by his hand-picked, so called, "Leaders" of the Hawaiian community that DO NOT represent the interest of those having an interest at stake subject to being diminished under the HHCA.

Instead of presuming that native Hawaiians recognized under the HHCA want to lower the blood quantum in one fell swoop with passage of S2899, the State of Hawaii officials need to hold a referendum limited solely to native Hawaiians as defined in the HHCA of 1920, (consisting of those who have qualified and received their leases of Hawaiian home lands, as well as those who have proven documentation and are on the State of Hawaii Department of Hawaiian home lands waiting list), and ask us if we want to lower the blood quantum. For reasons that will become clearer, State of Hawaii officials, including Senator Akaka, do not want to hold a referendum because they know what our answer will be. It is the same answer we have provided Congress time and time again: NO.

3. They tell you a bald faced lie that the native Hawaiian "community" has "always" "struggled" with the blood quantum requirement.

There was no struggle with the blood quantum until after State of Hawaii officials invented the Office of Hawaiian Affairs (OHA) in 1978, and sought to circumvent the blood quantum requirements of the HHCA repeated in Section 5(f) of the Admissions Act of 1959, by creating a brand new

class of persons called "Hawaiians" of no minimal blood quantum in 1978.

Ever since OHA in 1978, the native Hawaiians as defined in the HHCA of 1920, have had to deal with the schemes and ploys of those who have created every excuse as to why the State of Hawaii will not uphold its ministerial duties it had undertaken through the compact of Section 4 of the Admissions Act of 1959, to administer the HHCA of 1920, as well as the blood quantum requirement set out in Section 5(f) of the Admissions Act of 1959, in carrying out the separate provision of the Section 5(f) land trust.

Clear this up: Congress DID NOT and CAN NOT delegate any of its plenary power, because by definition, plenary power is absolute and belongs to Congress solely. If you take a look at the Supreme Court's Rice v. Cayetano decision, you will see that the State of Hawaii tried to argue that Congress had delegated its plenary power to the State of Hawaii.

The only struggle is from the non-beneficiaries struggling to steal our undelivered lands and benefits under the HHCA and Admissions Act Section 5(f) land trust.

Over 30,000 applicant native Hawaiians on the DHHL waiting list have been and are still struggling to get onto the land Congress had set aside for them in the HHCA of 1920.

Suddenly, minimal quantum, drop of Hawaiian blood, persons that outnumber the native Hawaiians are struggling to steal the undelivered lands of the native Hawaiians under the HHCA of 1920.

A basic and rudimentary understanding of simple math and the common denominator reveals that there are way more 1/32 part Hawaiians than there are native Hawaiians (50% plus blood).

Outnumbered and outvoted in the bogus OHA elections, native Hawaiians as defined in the HHCA of 1920 have stood up against the threat to their undelivered benefits time and again. Here we are again, defending the blood quantum.

In the Congressional record, prior to enactment of the HHCA of 1920, Congress debated as to what the blood quantum should be: "You cannot tell the difference between a 1/32

part Hawaiian and a white man, and for all intents and purposes, a 1/32 part Hawaiian is a white man." These words ring so true today.

For there is a vast world of difference between the native Hawaiians (50% plus blood) and the 1/256 part Hawaiians that would be recognized under S2899. Such differences are set out below.

But what buries S2899 into the graveyard of failed Bills, is the bogus premise that even though native Hawaiians DO NOT wish to lower the blood quantum under the HHCA of 1920, that we want people who do not qualify under the HHCA of 1920, to help us lower the blood quantum down to nothing.

Akaka's bill was slapped together in a haphazard fashion, throwing fake moves, as if it represented the beneficiaries under the HHCA.

Look at S2899: It wants no minimal blood quantum Hawaiians that can trace one ancestor of no minimal blood quantum to 1893 to be able to define what a recognized native Hawaiian should be. This is an outright blatant attempt to lower our blood quantum of the HHCA! It is patently bogus first step effort to steal the undelivered lands from the heirs of those who have not enjoyed their share of the lands since 1920, and before that, their share of the lands not alienated in the Mahele of 1848.

Not only does S2899 presume that all Native Hawaiians are ingrateful towards the United States for the HHCA of 1920, it presumes that we want a bunch of remotely related people claiming to be Hawaiian, to help us lower our blood quantum, when the record shows that we DO NOT want to lower the blood quantum.

Look at it yet another way: Under the Hawaiian Monarchy, the makaainana native tenants got NOTHING. Under the United States, the native tenants got the HHCA and Section 5(f) land trusts. Sure, the State of Hawaii officials and their types have prevented us from fully organizing under the HHCA and Section 5(f) land trusts, but at least we have an identifiable, legally protectable, proprietary entitlement.

4. The next lie by those who want to diminish the blood quantum has to do with the State of Hawaii's Trustees of

the Office of Hawaiian Affairs (OHA). S2899 is an attempt to create a bigger, useless Office of Hawaiian Affairs that will continue to siphon off the Section 5(f) revenues and continue to deprive the beneficiaries of the HHCA of 1920.

Trustees of OHA are elected by persons who are NOT native Hawaiians as defined in the HHCA of 1920.

Thus, the OHA Trustees are in favor of lowering the blood quantum for native Hawaiians under the HHCA of 1920, because OHA Trustees were elected by persons who DO NOT qualify as native Hawaiians as defined as the HHCA.

They don't tell you that the OHA Trustees do not represent the native Hawaiians as defined in the HHCA of 1920.

So here it is: OHA Trustees DO NOT represent the native Hawaiians as defined in the HHCA of 1920, because the OHA Trustees WERE NOT elected solely by native Hawaiians as defined in the HHCA of 1920.

This **differential in the alignment of interests** between the native Hawaiians as defined in the HHCA of 1920 (and the Admissions Act Section 5(f) land trust) and the State's OHA definition of a no minimal blood quantum "Hawaiian," was pointed out by our Supreme Court of the United States in Rice v. Cayetano.

The Supreme Court majority opinion stated that

"[a]lthough the bulk of the funds for which OHA is responsible appears to be earmarked for the benefit of 'native Hawaiians,' the State permits both 'native Hawaiians' and 'Hawaiians' to vote for the office of trustee. The classification thus appears to create, not eliminate, a differential alignment between the identity of OHA trustees and what the State calls beneficiaries." Rice v. Cayetano at 27.

5. Enemies of the beneficiaries of the HHCA of 1920 and Admissions Act Section 5(f) land trust, conceal from you that this differential in the alignment of interests between the State's definition of a no minimal blood quantum "Hawaiian" (that comprise the bulk of OHA's

electorate), and the native Hawaiians as defined in the HHCA of 1920, is the driving force behind S2899.

a. This driving force is composed of greed by those who already have their share of lands alienated since the time of the Mahele of 1848, but who do not meet the blood quantum requirements of the HHCA of 1920. They are more diluted in their mix of Hawaiian blood, more assimilated into the western ways, and totally despise any native Hawaiian which reminds them of what their ancestors did to the commoner caste of native Hawaiians identified as native tenants in the Mahele of 1848.

They are the toe-nail, pin-prick, drop of Hawaiian blood, minimal blood quantum "Hawaiians" that look and act no different than any other member of the general public. What is the difference between a 1/256 part Hawaiian and a non-Hawaiian? Practically no difference at all.

These descendants of those who have already received their share of the lands and proceeds from lands alienated in the Mahele of 1848, now want to come in for a second bite at the apple. Their problem is linked to the vanity of their ancestors who found it beneath their status as members of the alii caste to marry members of the commoner caste, hence they married out of the native Hawaiian race.

Whether a shoe salesman from Kansas, or a seamstress from New York, for sake of illustration, so long as they were white and not native Hawaiian, they were looked upon fondly by the alii caste that had received lands in the Mahele of 1848, and were made objects of their marriage as well as progenitors of the no minimal blood quantum Hawaiians of today.

b. The commoner caste of native Hawaiians known as the makaaainana had endured centuries of internecine-fratricidal warfare conducted at their expense and suffering, for the benefit of the elite, ruling alii caste.

For centuries oppressed under the brutal form of government that can be only identified as a caste system, and subjugated by threat of capital punishment enforced as a Kapu system, the common native Hawaiian makaaainana suffered extreme cruelties at the hands of the abusive alii caste.

With the arrival of European and American whalers, traders and merchants that had identified the then valuable Sandalwood found in the Hawaiian islands, the commoner caste were driven into the hills like slaves to denude the forest of iliahi or sandalwood, in order to provide the ali'i caste with trinkets, rolls of red cloth and other oddities during the now infamous "Sandalwood Trade."

Forced to abandon tending their traditional crops for sustenance, the makaainana would starve to death while being attacked by diseases to which they had no immunity, and introduced by foreigners trading with the alii caste.

The catastrophic demise in the population of native Hawaiian commoner makaainana caste was ignited by the infamous Sandalwood trade and aggravated by the introduction of diseases brought in by merchants and sailors trading with the powerful, elite, alii caste.

c. But one of the greatest and continuing tragedies imposed upon the commoner caste by the alii caste was the Mahele of 1848. In principle, each class were to have received one-third share of the lands. Although the King and the alii caste received their approximate one-third share each, the commoner caste identified as native tenants received ZERO or NOTHING in the Mahele of 1848.

Then the Monarchy had the nerve to turn around and sell to the commoner caste their lands under the Kuleana Land Grant Acts of 1850 to 1854. The Monarchy put in place many obstacles in the way of the commoner caste, now identified as native tenants, in order to keep the native tenants from receiving their one-third share. One example is that the native tenants had to pay for their own surveying of the land, which the King and the alii caste did not have to pay for, because few had any money to conduct the surveying. The alii caste also prevented the native tenants from registering their claims and limited the claim only to lands under actual cultivation, thereby removing lands left in fallow to rebuild the fertility of the soil.

The result of this oppressive scheme was that instead of receiving their one-third share or 33.33 percent of all the lands of Hawaii, the makaainana caste received .9 or less than one percent of the lands in the Kuleana Land Grant Acts of 1850-54.



This left an undelivered interest in 32.1 percent of all the lands in the Kingdom of Hawaii for the makaainana. This undelivered interest of 32.1 percent of the lands comprises those lands encumbered in the HHCA of 1920 and Section 5(f) of the Admissions Act of 1959, land trusts.

Left landless and driven into the urban core to live in squalor, the Monarchy had the nerve to pass a law outlawing vagrancy. Then they would arrest and imprison the makaainana caste and their heirs and put them to work on prison work-lines. The wall around Punahou School was built by such prison labor and today serves as a monument of the abuses imposed on the makaainana caste by the alii caste.

From 1848 until its overthrow in 1893---for over 45 years-- the alii caste did little or nothing to deliver to the makaainana caste and their heirs, the lands promised to them in the Mahele of 1848.

d. How the Monarchy was not good towards the makaainana, later to be identified as the native tenants.

Does Akaka want you to feel sorry for the overthrow of the Hawaiian Monarchy? Don't. The Monarchy was one of the most offensive forms of government ever to be imposed on mankind. While the alii paraded around throwing gala balls and being drunk most of the time, the makaainana, now called native tenants, suffered in so many inarticulate ways. And, as far as Liliuokalani's claim to be the last ruling alii: Take note that the last of the ruling alii of the Kamehamehas that had conquered the Hawaiian islands was Bernice Pauahi Bishop.

Bernice Pauahi Bishop was supposed to be Queen, but she found the Monarchy to be so offensive and repulsive with all of its privileges while the commoners suffered, Bernice Pauahi Bishop refused to be Queen. The Monarchy sucked. The Monarchy bestowed titles like "Prince Consort" and all that other nonsense upon ordinary people that made them behave extra-ordinary.

Under the Monarchy we got nothing but abused. At least under the United States we got the HHCA of 1920, and the Admissions Act Section 5(f) land trust. However, it is the State of Hawaii that has REFUSED to fully implement these two Act of Congress. And, like I said earlier, the State

of Hawaii is run by descendants of the alii caste and other minimal blood quantum Hawaiians that despise the higher blood quantum, real deal, native Hawaiians as defined in the HHCA of 1920.

S2899 attempts to want to change the rules now as a means of getting the State of Hawaii officials off the hook in fully implementing the HHCA and Section 5(f) land trusts.

e. Getting back to the non-beneficiaries of the HHCA of 1920, and their effort to steal the HHCA and Section 5(f) land trusts and using OHA to try and accomplish that:

Justice Breyer in his concurring opinion in Rice v. Cayetano, and joined by Justice Souter noted that

"As importantly, the statute defines the electorate in a way that is not analogous to membership in an Indian tribe. Native Hawaiians, considered as a group, may be analogous to tribes of other Native Americans. But the statute does not limit the electorate to native Hawaiians. Rather, it adds to approximately 80,000 native Hawaiians about 130,000 additional "Hawaiians," defined as including anyone with one ancestor who lived in Hawaii prior to 1778, thereby including individuals who are less than one five-hundredth original Hawaiian (assuming nine generations between 1778 and the present). See Native Hawaiian Data Book 39 (1998). Approximately 10% to 15% of OHA's funds are spent specifically to benefit this latter group, see Annual Report 38, which now comprises about 60% of the OHA electorate." Rice v. Cayetano, Breyer concurring with Souter joining at 3.

I am going to caution your committees about this current bill S2899's definition of a native Hawaiian.

S2899's definition of a native Hawaiian is being forced upon the beneficiaries identified under the HHCA of 1920, without an accurate accounting of our vote as to whether we wish to diminish our yet to be enjoyed benefits under the HHCA of 1920.

S2899's definition of a native Hawaiian is merely a disguised effort to circumvent and then lower the blood quantum requirements set out in the HHCA of 1920.

Think about this hard: S2899 wants to include any person who had an ancestor who was any amount of Hawaiian blood in 1893. Why 1893? That was the year of the overthrow of the Hawaiian Monarchy.

For some reason S2899 misses the universal observation that the Hawaiian Monarchy was NOT comprised solely of Hawaiians. Approximately 60% of the subjects of the Hawaiian Monarchy were non-Hawaiian. For S2899 to use the overthrow as a pretext to argue that the Hawaiian Monarchy was a native Hawaiian government, utterly ignores the historical fact that not all of the subjects of the Hawaiian Monarchy were native Hawaiian.

S2899's ignorance of the fact that the Hawaiian Monarchy was not comprised solely of native Hawaiians demonstrates the fundamental conceptual error that expresses itself as S2899.

C. The Definition of Native Hawaiian in Akaka's Bill is So Unreasonably Broad That It Includes Anybody With One Hawaiian Ancestor

S2899, in Section 2, Definitions... the term "Native Hawaiian" means the indigenous, native people of Hawaii who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii." Lineal descendants with no minimal blood quantum?

This definition is so unreasonably broad that it includes even those persons with just a drop of Hawaiian blood, yet claiming to be Native Hawaiian, including those persons with one Hawaiian ancestor out of 500.

Justice Breyer of the Supreme Court in his concurring opinion in Rice v. Cayetano, remarked about this type of unreasonable definition. Breyer, joined by Justice Souter stated that:

"I have been unable to find any Native American tribal definition that is so broad...There must, however, be some limit on what is reasonable..."

Rice v. Cayetano, Breyer concurring at 3.

I want to go on record as being OPPOSED to Senate Bill No. S2899, because of the no minimal blood quantum definition of a native Hawaiian.

Ladies and Gentleman of my United States Congress and these Committees, I want you to send S2899 into the dust-bin of history.

Or, if you are hell bent in rushing this last minute, ditch effort, slapped together, sloppy bill, please substitute the definition of a native Hawaiian as defined in the HHCA of 1920, instead of this no minimal blood quantum bogus definition.

No minimal blood quantum in 1893, is the same as no minimal blood quantum today.

No minimal blood quantum today means that the real deal, bona-fide, proven, documented native Hawaiians as defined in the HHCA of 1920 continue to get the shaft.

D. First Things First, Take Care Of The Beneficiaries  
Of The HHCA of 1920

With over 30,000 beneficiaries being ignored on the State of Hawaii Department of Hawaiian Home Lands waiting list, the Senator from Hawaii can't even take care of this small group of bona-fide, proven, qualified, documented native Hawaiians.

Who believes Senator Akaka will be able to take care of an even larger group of people, by adding an additional 150,000 people who are remotely part Hawaiian?

This latter group of "Hawaiians" are no more native Hawaiian than those who claim to be American Indian but only have one American Indian ancestor 9 generations earlier.

Has Senator Akaka forgotten so soon? Or is Senator Akaka being put up to this by those who do not qualify under the HHCA of 1920?

E. This Is Another Disguised Effort To Wipe Out The  
Blood Quantum Requirements For Those Who Qualify  
Under the HHCA of 1920

You should all know that State of Hawaii officials, view the native Hawaiians as defined in the HHCA of 1920, as a burden they would like to get rid of.

What better way to rid itself of the State of Hawaii's obligation under Section 4 of the Admissions Act of 1959, than to lower the blood quantum down to nothing, so that the native Hawaiians (50% plus blood) will be subsumed and outnumbered by those members of the general public who have historically been hostile to the beneficiaries of the HHCA of 1920, and create a pool so large that it will allow the State of Hawaii to shirk its obligations to 50%plus native Hawaiians?

What really upsets me is the fictitious, outright lie S2899 is premised on: that there is a struggle in the native Hawaiian community over the blood quantum requirements of the HHCA of 1920. There was no struggle with the blood quantum, until after the State of Hawaii invented its Office of Hawaiian Affairs in 1978, and when the State subsequently invented its very own definition of a "Hawaiian" to include those with a drop of Hawaiian blood, including those with one ancestor out of 500.

All of this the State of Hawaii did to circumvent the blood quantum requirements located in Section 5(f) of the Admissions Act of 1959, which limited the "lands...proceeds and revenues" to native Hawaiians as defined in the HHCA of 1920. By circumventing the blood quantum requirements located in Section 5(f), the Office of Hawaiian Affairs initially spent Section 5(f) revenues on persons claiming to be "Hawaiians". OHA has even used Section 5(f) revenues to lobby and advertise to try and diminish the blood quantum requirements of the HHCA and Section 5(f) land trusts.

This unbridled assault upon the native Hawaiians as defined in the HHCA of 1920, compounded the great harm and injury upon those specific, identified and recognized native Hawaiians still waiting for their homestead lands.

The State of Hawaii created this mess called the Office of Hawaiian Affairs in 1978, and this fictitious struggle

imposed upon the beneficiaries as defined in the HHCA of 1920. It is not a struggle, it is a nuisance created by the State and its Office of Hawaiian Affairs.

The Second Fiction of Senator Akaka's bill is that somehow the United States imposed the blood quantum on the native Hawaiians. In point of fact, as mentioned earlier, native Hawaiians had a blood quantum even under the laws of the Kingdom of Hawaii. Under Title 6, Chapter 32, Section 1454 of the Laws of the Kingdom of Hawaii, there was a blood quantum limiting descent of Kuleana Lands to heirs of the full or half blood only.

Another fact Senator Akaka's bill completely ignores is that those persons having an interest at stake under the HHCA of 1920, have DEFENDED the blood quantum definition since the HHCA of 1920's inception.

Akaka's bill insults the beneficiaries of the HHCA of 1920.

Senators Akaka and Inouye, your Democratic Party rules the politics of the State of Hawaii.

You cannot even take care of the more than 30,000 qualified applicants dieing on the State of Hawaii Department of Hawaiian Home Lands waiting list, and you two Senator's want to extend federal recognition to any person claiming to be Hawaiian, with one drop of Hawaiian blood, including those with one ancestor out of 500?

The reason why the State of Hawaii ruling Democratic Party elite want to rush this job through, is so that it can once and for all, wipe out its obligations to the native Hawaiians as defined in the HHCA of 1920.

For 20 years we native Hawaiians as defined in the HHCA of 1920 have received NO benefits from OHA.

Right now OHA is hoarding over \$300 million of the Section 5(f) revenues which is limited to be spent on native Hawaiians as defined in the HHCA of 1920.

Portfolios and investements is what OHA calls the hoarding of the Section 5(f) revenues. The god-damned OHA is NOT bettering the conditions of the native Hawaiians as defined in the HHCA of 1920. OHA can go to hell.

Finally, day of judgment came when the Supreme Court of my United States in Rice v. Cayetano, gave OHA the ass-kicking it had 20 years long deserved.

So what do the State of Hawaii officials do? They get Mr. Akaka to introduce this S2899, in a deliberate effort to circumvent the ruling of the Supreme Court in Rice v. Cayetano.

III. THE STATE OF HAWAII SHOULD HOLD A REFERENDUM AMONG NATIVE HAWAIIANS AS DEFINED IN THE HHCA, AND ASK US IF WE WANT TO LOWER THE BLOOD QUANTUM DOWN TO NOTHING

The State of Hawaii is run by persons who have a trace of Hawaiian blood but DO NOT qualify as beneficiaries under the Hawaiian Homes Commission Act of 1920.

These people have alternately despised and ridiculed the qualified beneficiaries as persons too poor to make it on their own and hated these beneficiaries because they stood in the way of the minimal quantum, toe-nail, pin-prick so called "Hawaiians" that wanted to steal the HHCA of 1920 lands, and who now want to wipe out the blood quantum and assume the identities of the native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920, with S2899.

With regards to Senator Akaka and his five groups working groups, they were working alright: Working to steal the undelivered lands of the HHCA of 1920 and Section 5(f) land trusts from the beneficiaries under the HHCA of 1920

A. OHA: A Useless and Wasteful State Ploy

Having not received anything from the Section 5(f) land trust since Statehood in 1959, native Hawaiians as defined in the HHCA of 1920 (50% plus blood) began to close on the Section 5(f) land trust in the Fall of 1977.

Along comes Frenchy DeSoto and John Waihee who spearheaded the effort to set the stage to steal the Section 5(f) land trust from the beneficiaries of the HHCA of 1920, as delegates to the 1978 State of Hawaii Constitutional Convention.

OHA was born from the loins of the 1978 State of Hawaii Constitutional Convention and DeSoto and Waihee were delegates aiming to steal the Section 5(f) land trust.

Defective at birth with its brand new definition of a no minimal blood quantum "Hawaiian," OHA would grow up to become a MONSTER in the 20 years it would take to get the punishment it deserved from the Supreme Court of my United States in the Rice v. Cayetano decision.

Read the opinion, and pay attention to those parts where the Justices talk about the native Hawaiians as defined in the HHCA of 1920 NOT electing and NOT being represented by the OHA trustees.

As I mentioned earlier, the High Court hinted that OHA may have prevailed if the OHA trustees were elected by only native Hawaiians as defined in the HHCA of 1920.

Now ask yourself, why doesn't the State of Hawaii obey the federal mandate of Section 5(f) of the Admissions Act of 1959? Why doesn't the State of Hawaii and its ruling Democratic party elite want to ask the identified beneficiaries under the HHCA of 1920, if they wish to lower their blood quantum?

The answer is simple: They god-damned know full well that we will NOT vote to lower the blood quantum for the beneficiaries under the HHCA of 1920, until every single applicant on the waiting list, some of whom are still waiting for more than six (6) decades, have received their lands. We will NOT lower the blood quantum until the State of Hawaii fully implements the HHCA of 1920 and allows us to organize into Associations as spelled out in the HHCA of 1920.

B. Ask The Real Party In Interest, Not the Minimal Blood Quantum, Toe-Nail, Pin-Prick, Drop of Blood, One Ancestor Out of 500, So Called "Hawaiians"

So what does the ruling Democratic party's elite do? They ask those persons who ARE NOT beneficiaries under the HHCA of 1920, if THEY want to lower our blood quantum for us.

Then they disguise the results as having been expressed by the native Hawaiians identified in the HHCA of 1920. This does nothing but infuriate the beneficiaries who are now more resolute in their opposition to any effort to lower the blood quantum under the HHCA of 1920.



How did the State of Hawaii do this? They created their very own definition of a no minimal blood quantum Hawaiian in 1978, disguised them under the term "Hawaiian" and then asked these persons if they wanted to lower OUR blood quantum.

State of Hawaii officials and the Office of Hawaiian Affairs has been behind every single bogus and fixed poll asking persons not contemplated by the HHCA of 1920, if THEY want to lower OUR blood quantum requirements.

The reason why the State of Hawaii and OHA asks the minimal blood quantum "Hawaiians"---that same broad, open-ended class that would be defined as a native Hawaiian in your bill today---is because the State of Hawaii and OHA knows that the native Hawaiians as defined in the HHCA of 1920 WILL NOT lower our blood quantum requirements.

C. DO NOT Insult Those Who Have Died On The Waiting List

The native Hawaiians that have died on the State of Hawaii's Department of Hawaiian Home Lands waiting list are screaming for vengeance. Hear their cries and their ancestor's cries of the makaainana commoners that never received their lands. Hear their screams for justice long into your sleepless nights, Senator Akaka.

Do not make the mistake of passing the legislation out of your committees until you amend the definition of "native Hawaiian" and limit it only to native Hawaiians as defined in the HHCA of 1920.

IV. CREATING PROBLEMS BY PASSING THIS SLOPPY BILL S2899

First, if you pass this legislation out of your Committees with out such an amendment and IF it makes it's way onto the floor of the Senate and House and IF you get the votes to pass it, and IF the President signs it into law THAN you will have played a role in creating the CONFLICT between the HHCA of 1920 and this piece of S2899.

Fortunately, the HHCA of 1920 has a savings clause which renders EVEN future Act of Congress as null and void, if it conflicts with the HHCA of 1920.

This piece of legislation directly conflicts with the HHCA of 1920. It's the blood quantum. It is about who is a native Hawaiian. Is a 1/256 part Hawaiian a native Hawaiian like those who are 50% plus? S2899 says so.

The command of the HHCA is explicit about who is a native Hawaiian: "not less than one-half part of the blood."

The second reason is that you will have created a record of your participation of adding insult to injury in trampling upon the yet to be enjoyed benefits of those who wait for their Hawaiian Homestead lots and who may organize as Associations, if they want, under the HHCA of 1920.

The third reason is that if you pass this bill out, you are going to have to deal with the Federal-State Compact of Section 4 of the Admissions Act of 1959.

The Federal-State Compact embedded in Section 4 of the Admissions Act of 1959 is sacred and indissoluble as the Union of the United States itself.

To dissolve the compact, you will need a referendum in the State of Hawaii among the general public, a referendum in the State of Hawaii among the native Hawaiians as defined in the HHCA of 1920, as well as passage by both Houses of Congress. In 100 years you may get a referendum in the State of Hawaii among the general public, but you will not get an approving referendum from those beneficiaries that have suffered under the State of Hawaii's misadministration of the HHCA of 1920 anytime soon and definitely not before the Clinton Administration leaves office.

#### V. CONCLUSION

The HHCA of 1920 already provides a vehicle, which this bill feebly attempts to duplicate. It is a waste of effort for Congress to spend all of this time and money to re-invent the wheel.

Take advantage of your free trip to Hawaii and visit the Hawaiian Homestead of Keaukaha in Hilo.

The Keaukaha-Panaewa Hawaiian Homestead Association is renown for its advocacy for the native Hawaiians as defined in the HHCA of 1920. It refuses to be part of the State Council of Hawaiian Homestead Associations (SCHHA). The

Keaukaha-Panaewa Hawaiian Homestead Association speaks the truth. Listen to them. Talk to Uncle Patrick Kahawaiolaa, a renown and stalwart advocate of native Hawaiians.

So that this will all not be lost on you, I will remind you that the purpose of the HHCA of 1920 is to "rehabilitate" native Hawaiians. What does "rehabilitate" mean? It means self-determination.

Why have not the native Hawaiians federally recognized under the HHCA of 1920 achieved full self-determination? Answer: It is because of State of Hawaii officials tampering, hampering and hindering our efforts to organize pursuant to the terms of the HHCA of 1920, and the United States Department of Interior looking the other way.

With such a record of indifference by the Department of Interior, why would we want to be put under the "care" of the Department of Interior?

The way the Department of Interior have notoriously cared for our brother and sister Indians on the continental United States, and the way the Department of Interior have cared less for the native Hawaiians abused by the State of Hawaii, why the hell would we want to be put under the "care" of the Department of Interior?

We are already under the care of the Department of Interior with their review of the State of Hawaii Department of Hawaiian Home Lands, and the Department of Interior continues to allow the State of Hawaii to rip off us.

But, how does the State of Hawaii officials frustrate the purpose of the HHCA of 1920? They slowly issue leases to native Hawaiians, in hopes that the native Hawaiians will die on their "waiting list."

State of Hawaii officials are engaged in slow motion genocide of the 50% plus blood quantum native Hawaiians.

S2899 is a feeble effort to duplicate what is already on the law books, but which the State of Hawaii officials do not wish to fully implement.

The State of Hawaii officials pretend they have the best interest of the native Hawaiians at heart, but don't fall

for it. Whatever you do, do not fall for the cry-baby overthrow of the Monarchy malarchy.

Recall the makaainana commoners, the native tenants that died without having received their lands under the Monarchy's Mahele of 1848, and count the native Hawaiians that have died under State of Hawaii Officials administering the HHCA and Section 5(f) land trust.

They are screaming out right now and you will hear their howling cries long into your sleepless nights if you pass this bill out of your committees.

And one more thing, The U.S. Senate Committee on Indian Affairs has NO jurisdiction over native Hawaiians as defined in the HHCA of 1920. Such jurisdiction over Native Hawaiians and the HHCA of 1920 belongs solely to the U.S. Committee on Energy which have heard the cries of the native Hawaiians in helping us to kill the stupid 1990 "Purpose Clause" bill, which was a prior attempt to lower the blood quantum under the HHCA of 1920. In the "Purpose Clause" bill, State of Hawaii officials feigned that they were so stupid, they did not know what the purpose of the HHCA of 1920 was.

State of Hawaii officials put on their "dumb act" because they DO NOT want to implement the HHCA of 1920, and sought to change the entire purpose of rehabilitating native Hawaiians under the HHCA, and change it to providing a homeland for anybody with one drop of Hawaiian blood---the general public of Hawaii.

Senator Akaka, you will not get my vote in the next election. And this brings me to another observation to share with all of you: Akaka could care less about the votes from the native Hawaiians as defined in the HHCA of 1920, because we are so few. Akaka, like so many other politicians representing the State of Hawaii, cares about the votes he can milk from the general public---1/32 part and less Hawaiians that comprise the bulk of the general public.

I know some of you can identify with this painful observation as it occurs even in the American Indian communities where persons look and portray themselves to be American Indian, but their status, position, jobs, self-interest and self-preservation is dependant on catering to

those who are not, or are remotely, American Indian. Commonly referred to as the the Uncle Tom's of the American Indians, they are brown on the outside, but white on the inside.

With the native Hawaiians, we call them coconuts; brown on the outside, bragging to all the world that they are native Hawaiians, but trying to put the dagger into the heart of the 50% plus blood, native Hawaiians as defined in the HHCA of 1920 and prevent them from organizing as Associations instead of tribes under the HHCA of 1920.

That's right, you got it: What the tribe is to the American Indians, the Association is to native Hawaiians federally-recognized under the HHCA of 1920.

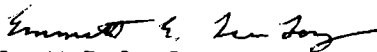
If the U.S. Senate Committee on Indian Affairs wishes to assist the native Hawaiians as defined in the HHCA of 1920, then you should all gut and eviscerate S2899.

One last thing: Do not fall for the bogus "President Clinton is leaving office, so you better pass S2899" charade. Whether Clinton is leaving or Gore is being elected or Bush is going to be President, should not alter your judgment. DO NOT WIPE OUT THE NATIVE HAWAIIANS (50% PLUS BLOOD). These deliberations should take as long as those who still wait for their Hawaiian home lands.

I urge you to amend, or condemn and destroy Senator Akaka's Bill S2899.

Aloha and again, Welcome to Hawaii, my respected members of Congress.

Sincerely,

  
 Emmett E. Lee Loy  
 Attorney at Law  
 758 Kapahulu Avenue, Suite 429  
 Honolulu, Hawaii 96816  
 Tel. (808) 922-0455

TESTIMONY OF MICHAEL W. GIBSON

My name is Michael Gibson. My family first arrived in Hawaii in 1842. Since then eight generations of my family have lived in Hawaii. They were not missionaries or large landowners. They have been teachers, librarians, farmers, policemen, priests, doctors, lawyers and social workers. They have always been responsible, caring and proud to be Hawaiians. Many are part-Hawaiian and some like myself are not.

My grandfather was born in 1889 in Waimea, Kauai. His mother was born in the 1850's in Honolulu. My grandfather's family had come from England and Canada. My grandmother was born in 1895 in Papaikou, on the Big Island. Her family was from Germany. My grandparents and their ancestors were citizens of the Kingdom of Hawaii and later the Republic of Hawaii. My other grandparents were from Scotland. None of my ancestors were Americans except by virtue of being born in Hawaii or having become citizens at the time of annexation.

Under the laws of the Kingdom of Hawaii, everyone born in Hawaii was a citizen of the Kingdom of Hawaii. In 1846 the laws of the Kingdom specifically stated that all persons born in Hawaii, irrespective of race or ancestry, would be considered "native subjects." The case of Naone v. Thurston, 1 Haw. 220 (1856) held that persons born in Hawaii of foreign parents were Hawaiian subjects. In 1893 when the Kingdom of Hawaii was overthrown, there were Chinese, Japanese and Caucasians in addition to native Hawaiian who were citizens of the Kingdom of Hawaii. In 1893 approximately 60% of the citizens of the Kingdom of Hawaii were not native Hawaiians.

My concern with the Akaka bill is that it is based in part upon the incorrect factual premise that only native Hawaiians were citizens of the Kingdom of Hawaii and therefore are the

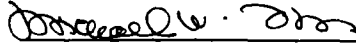
only persons entitled to "reparations and restitution for acknowledged wrongs." Specifically the Akaka bill in its reference to the Apology Resolution states that the United States acknowledged the ramifications of the overthrow of the Kingdom of Hawaii and supported reconciliation efforts between the United States and native Hawaiians. The Apology Resolution and the Akaka bill neglect to mention the majority of non-native Hawaiian citizens of the Kingdom of Hawaii. In defining native Hawaiian, the Akaka bill limits native Hawaiians to those who resided in Hawaii on January 1, 1893, days before the overthrow of the Kingdom of Hawaii. Not only does the definition eliminate non-native Hawaiian citizens of the Kingdom of Hawaii, it eliminates native Hawaiians who were not living in Hawaii on January 1, 1893.

I am not opposed to federal funding of Hawaiian programs to improve the condition of needy Hawaiian or to continue the tax exempt status of alii trusts and other non-profit organizations benefiting needy Hawaiians. I am not opposed to self government for native Hawaiians if that is their choice. I am opposed to ignoring the descendents of nearly half the citizens of the Kingdom of Hawaii if any basis for a program or privilege is the overthrow of the Kingdom of Hawaii. All the descendents of citizens should be treated equally irrespective of race when it comes to reparations and restitution for the allegedly wrongful conduct by the United States. The United States should not attempt to circumscribe its legal responsibilities for restitution to only a single racial group, ignoring the majority of others identically affected by its actions.

Similarly, I do not see that the United States can "negotiate" with the State of Hawaii regarding the transfer of lands, resources, and assets to the Native Hawaiian governing body. All descendants of citizens, whether Hawaiian or non-Hawaiian, would have a similar legal right to

have lands, resources, and assets restored to them. Transferring assets now held by the State of Hawaii that are held for the entire public may benefit Native Hawaiians, but it will harm the rest of the residents, including in particular descendants of non-Hawaiian citizens of the Kingdom.

DATED: Honolulu, Hawai'i; August 23, 2000.

A handwritten signature in dark ink, appearing to read "Michael W. Gibson", is written over a horizontal line.

MICHAEL W. GIBSON



*Testimony of Robert E. Booth. 958 Prospect Street, Honolulu, Hawaii 96822. 808-550-8111. Offered 8/29/00*

My name is Robert Booth. I am not here representing anyone necessarily and I don't have a bunch of initials after my name. And I don't have even a tincture of blood quantum, and I know only a tiny smattering of the Hawaiian language, which basically means I know that *mahalo* doesn't mean the rubbish bin. I'm just your average white guy from the mainland. I've lived here for only 16 years though and as much as any place and more than many places I have lived Hawai'i is my home too. Moreover about 11 1/2 years ago my daughter was born here, in Queen's hospital. I imagine she will live here all her life and even if not all her life I will always encourage her to consider Hawai'i her home. Her mother was born here forty some years ago in St. Francis hospital. Her parents, my daughter's maternal grandparents were born on Maui 80 years or so ago their parents came here from China and Okinawa about 100 years ago. That being said I would posit to you before me and those seated all around me even I, just your average white guy from the mainland, have a vested interest in the decisions you are considering about this, our Hawai'i nei.

I think the decision you are contemplating, creating a sovereign Hawaiian homeland here in Hawai'i, much like, I guess, the tribal lands certain Native American Indians enjoy on the mainland, is all about doing the right thing. I hope we can all agree that you are here because you want to do the right thing. And we are all here to ask you to do the right thing. The question thus is what is the right thing. That is the question I would like to address this afternoon, in the unmmmm three minutes or so I have left.

I put it to you, ladies and gentlemen, that the right thing is for you to find a way to give this nation back, in its entirety, to the Hawaiian people. We don't have to discuss whether the overthrow a hundred and some years ago was illegal or not illegal. We don't have to consider whether that plebiscite thing a hundred years or so ago was in any way binding. We don't have to consider whether the President so-and-so never intended for the marine occupation of Honolulu and the imprisonment of the Queen to be permanent. Right now, right here we can decide simply this "let us do the right thing." Let us not quibble. Let us not waver. Let us not hem and haw. Let's just do it.

Why is giving this nation back the right thing?

That's a fair question. Many would say its not THE right thing its only A right thing among many options.

First, I put it to you that it is more right than trying to do what you are contemplating: erecting a nation within a nation. Native American Nations exist all across the mainland United States. Has any real good come of those nations within a nation. I would posit that no good has come, unless you call good the continuation, the augmentation of racist sentiment on both sides of those borders. No good has come unless you call good the proliferation of legalized gambling and the evils that accompany it. A rather wise man said about two thousand years ago, a nation divided against itself cannot stand. I put it to you that erecting a nation within a nation is not far different from dividing a nation against itself.

Moreover, erecting a nation within a nation is only a half-right thing. The state motto is the life of the land is perpetuated in righteousness. Righteousness, folks, does not allow of half measures. The wisdom we learned as children may be helpful. We all were told I am sure two wrongs don't make a right. I think we can add two half rights don't make a whole right and neither will one-half-right.

Finally, there is this thing called amends. In the twelve steps it is found in steps eight and nine. We make a list of all that we have harmed and then we make amends to them. Fundamentally, amends means we change. Fundamentally it means we stop doing the damaging behavior. But implicit in the idea of amends is also the idea of restitution. And that means when we find that we are in possession of something that doesn't belong to us we give it back. We don't have to worry about whether we came by it legally or not. It simply means, if something ain't ours we don't keep it. I posit to you that these Hawaiian Islands this Hawaiian nei is not yours and you should give it back.



## HOUSE OF REPRESENTATIVES

STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813

August 23, 2000

Senator Ben Nighthorse Campbell, Chair  
and Members of the U.S. Senate Committee on Indian Affairs

Representative Don Young, Chair  
and Members of the U.S. House Committee on Resources

Aloha Chairs Campbell and Young and members of the Senate Committee on Indian Affairs and the House Committee on Resources. My name is Sol Kaho'ohalahala and I am the Hawai'i State Representative for the 7<sup>th</sup> District, which is made up of West Maui, and the islands of Kaho'olawe, Lana'i, and Moloka'i, including the District of Kalawao also known as Kalaupapa. I was born and raised on the island of Lana'i. I would like to speak in support of S.2899 and HB.4904. I believe it is the necessary next step for Native Hawaiians.

In my capacity as a state representative, I am highly aware of the challenges our people face, and many times, the inability of the state government to effect a positive resolution to those challenges. While there are a number of explanations for the inability to resolve Hawaiian issues, ranging from a lack of information to a direct conflict with the state's own financial interests, I believe that my colleagues in the Legislature want to assist Native Hawaiians in achieving better solutions for their issues.

During Hawai'i's 2000 Legislative session, House Concurrent Resolution 41, entitled *Supporting Federal Recognition of a Native Hawaiian Nation*, was sponsored and passed with unanimous support in the House, and near unanimous support in the Senate. This resolution, like the creation of the Office of Hawaiian Affairs over 20 years ago, is a testament to the fact that the people of Hawai'i do support autonomy for its indigenous Native Hawaiians.

The State of Hawai'i is not the best vehicle for self-governance for Native Hawaiian people. Even in carrying out its best policies, the state cannot produce the kinds of solutions for Hawaiian issues that the Hawaiian community can produce. As the breaches of the Hawaiian Homes Commission trust illustrate, the state has not always proved to implement the best policies. It is difficult for Native Hawaiians to participate in and advocate through the state government because it uses culturally foreign processes of decision-making and conflict resolution. We need a governing structure of our own—one that can make decisions in a culturally appropriate way and can represent our peoples' concerns and ideas to local, state, and federal governments.

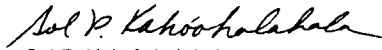
There are an endless number of issues brought to the state legislature, which directly impact Native Hawaiians' daily lives. Hawaiian Home Lands policy, water rights, preservation of sacred sites, and zoning and development policies are all brought to the legislature for direction. Each of these issues directly impacts the Native Hawaiian peoples' ability to preserve, protect and transmit our culture, language, and traditional knowledge to future generations. A body that is not directly and solely accountable to the Native Hawaiian people decides each of these issues. The state and its agencies are simply the wrong tool to resolve many Native Hawaiian issues. Because there is no recognized Native Hawaiian government, however, the legislature is forced to try to deal with the issues. It creates a situation that is frustrating for the both the legislature and Native Hawaiians.

It is important that this bill, and any additional efforts towards reconciliation, represent a true recognition of authority of Native Hawaiians to govern themselves and their land base. Without territorial jurisdiction, there is no "safety zone" for the uninterrupted revitalization of our language, culture, and traditional practices.

I would like to make one recommendation as it pertains to the ability to testify on this bill. We are a people with a strong oral tradition and a practice of speaking from our *na'au*. These two cultural practices of communication do not lend themselves easily to advance sign-up lists and the early submission of oral testimony. I also understand the need to be able to prepare and maintain a schedule during official hearings. I suggest that if there is extra time available once you have finished receiving testimony from those that have signed up in advance, that you set up an on-site sign-up list to afford those present an opportunity to testify as well.

Thank you for receiving my testimony in support of this measure.

Aloha,



Sol P. Kahoo'ohalahala  
7<sup>th</sup> District Representative

7<sup>th</sup> District — Lahaina • Oloalu • Mala • Ka'anapali • Lana'i • Moloka'i • Kalawao • Kaho'olawe  
State Capitol, Room 304, Honolulu, Hawaii 96813  
Tel: (808) 586-6790 / Fax: (808) 586-6779  
e-mail: [repkahooalahala@capitol.hawaii.gov](mailto:repkahooalahala@capitol.hawaii.gov)

*Ahupua'a O Moloka'i  
P.O. Box 1821  
Kaunakakai, Hawaii 96748*

## *State Council of Hawaiian Homestead Associations*

In speaking for the Ahupua'a O Moloka'i I wish to state that we are in support of the intent of Bill S2899, with amendments that are made being beneficial to the Native Hawaiian people and that action on this Bill should be done immediately upon approval..

We are also in support of Resolution No. 2866 of the State Council of Hawaiian Homestead Associations, a copy of which is attached hereto.

There are pieces of the Bill I would like to take time to ask for reiteration of:

### Section 1 - Findings.

(3) the United States has a special trust relationship to promote the welfare of the native people of the United States, Including Native Hawaiians:

(4) under the treaty-making power of the United States, Congress exercised its constitutionally authority of confirm a treaty between the United State and the government that represented the Hawaiian People, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(7) approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 (number still rising) Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land;

(8) the Hawaiian Home Lands continue to provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and Native Hawaiians have maintained other distinctly native areas in Hawaii;

*Ahupua'a O Moloka'i*  
*P.O. Box 1821*  
*Kaunakakai, Hawaii 96748*

### *State Council of Hawaiian Homestead Associations*

(9) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii'

(10) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarch or through a plebiscite or referendum;

(11) the Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution;

(12) despite the overthrow of the Hawaiian government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs;

(13) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control;

(15) the Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions,

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*P.O. Box 1821*  
*Kaunakakai, Hawaii 96748*

***State Council of Hawaiian Homestead Associations***

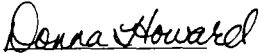
beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs;

(16) this Act responds to the desire of the Native Hawaiian people for enhanced self-determination by establishing a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian governing body for the purpose of giving expression to their rights as native people to self-determination and self- governance;

**Section 10. Disclaimer**

Nothing in this Act is intended to serve as a settlement of any claims against the United States.

Respectfully Submitted:



Donna Howard, President  
Ahupua'a O Molokai

# State Council of Hawaiian Homestead Associations

PO Box 2721 Waiānana, Hawaii 96792  
Tel: 386-4045 Fax: 808 668-4255

## Executive Board

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Benjamin Kalelopa  
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ARMS

Athoa Watanabe  
OFFICE  
MANAGER

## RESOLUTION NO. 2866

### STATE COUNCIL OF HAWAIIAN HOMESTEAD ASSOCIATIONS

A resolution to support federal legislation necessary to express the policy of the United States Government and define the special political relationship with Native Hawaiians.

**WHEREAS,** the State Council of Hawaiian Homestead Associations (SCHHA) represents the interests of 30,000 or more Hawaiian Homestead beneficiaries who reside on Hawaiian home lands and have maintained communities distinct from other populations; and

**WHEREAS,** the stated purpose of SCHHA is to advocate for policy and legislative changes that will protect, preserve and defend the Hawaiian Home Lands Trust, as defined in the Hawaiian Homes Commissions Act, 1920, as amended (HHCA); and

**WHEREAS,** in 1987 SCHHA exercised its own self-determination by voting to support the lowering of the blood quantum as defined in the HHCA, with the objective of using a sliding scale to lower the blood quantum, to 1/32%, effectively creating a single class of native Hawaiians as defined by the HHCA; and

**WHEREAS,** SCHHA exercised its own self-determination by voting to support special legislation to encourage the formation of an elected Hawaiian Homes Commission to manage the HHCA, with the objective by native Hawaiians as defined by the HHCA; and

**WHEREAS,** Native Hawaiians as defined by the HHCA have a common identification ancestrally and racially as a group of native Hawaiians and they have a continued historical maintenance of political influence over members of their group and there non-affiliated homestead communities, and they are not part of a presently recognized tribe; and

**WHEREAS,** the SCHHA organization consists of elected officers representing the interests of more than 30,000 Hawaiian Homestead beneficiaries representing native Hawaiians who reside on the islands of Hawaii, Maui, Kauai, Molokai, and Oahu; and

**WHEREAS,** the Twentieth State Legislature, Regular Session of 1999, State of Hawaii has passed several Resolutions urging Congress to develop a government-to-government relationship between Native Hawaiians and the federal government; and

**WHEREAS,** there is an urgent need for Congress to effect a clear statement about the political status of Native Hawaiians and acknowledge that Native Hawaiians are a distinct indigenous people, who have a "special trust relationship" with the federal government as a result of their unique history, and Native Hawaiians ; have the right to self-determination.

**NOW, THEREFORE, BE IT RESOLVED,** that the State Council of Hawaiian Homestead Associations at Honolulu, Oahu this 20th Day of August 2000, support the passage of S.2899, A Bill To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes that will clarify the "special trust relationship" between the federal government and Native Hawaiians; establish a clear federal policy to recognize the political status of Native Hawaiians; and grant the right of self-determination.

**BE IT FURTHER RESOLVED THAT,** that certified copies of this Resolution be transmitted to the Honorable Benjamin Cayetano, Governor State of Hawaii, the Honorable Raynard S. Soon, Chairman, Hawaiian Homes Commission, The Honorable Clayton Hee, Chairperson, Office of Hawaiian Affairs, the Honorable Senator Daniel K. Inouye, the Honorable Senator, Daniel K. Akaka, the Honorable Congressman, Neil Abercrombie, the Honorable Congresswoman, Patsy T. Mink, the, U.S. Departments of Interior and Justice, Hawaii State Senate and Hawaii House of Representatives, Department of Land and Natural Resources, Kamahamaha Schools Bishop Estate, Queen Liliuokalani Children's Center, Queen Emma Foundation, Lunalilo Home and appropriate Senate and House Committees.



*June Lee*  
Ahupua'a O Hawaii

*Judy Naumu-Stewart*  
Ahupua'a O Kauai

*Heidi A. Domo*  
Ahupua'a O Maui

*Donna B. Howard*  
Ahupua'a O Molokai

*Anthony J. Song*  
Ahupua'a O Oahu

Revised  
8/29/2000

Testimony on Senate Bill 2899/ House Bill 4904,  
The Akaka Federal Recognition Bill  
by Marion Greig Anderson Kelly,  
Pro-Kanaka Maoli Independence Working Group  
August 30, 2000

(This date was changed to Aug. 29, 2000, 1 - 5 p.m.  
and changed a second time to August 29, 2000, at 11 a.m.)

Aloha, My name is Marion Greig Anderson Kelly. I wish to thank you for providing time today for me to give this testimony.

I wish to point out what I see as the basic flaw in this so-called "recognition" bill. This bill asks the U.S. to recognize Native Hawaiians as Native American Indians. We all know that Hawaiians are not Native Americans. This bill is flawed from the beginning and should be withdrawn. This bill asks the U.S. for a "trust" relationship for Hawaiians, who then would be "wards," who need someone to take care of them because they are incapable of taking care of themselves. That is what a "trust" relationship is!

We all know that the Independent Hawaiian Kingdom was stolen from the citizens and its Queen, Lili'uokalani, in 1893, with the help of the U. S. Marines, who invaded O`ahu from the U.S.S. Boston on January 16, 1893. We also know that in 1897 the citizens of the Hawaiian Kingdom presented to the United States Congress petitions containing over 38,000 signatures. This "Monster Petition" told the U.S. Congress, in no uncertain terms, that the people of the Kingdom of Hawai'i did not ask for, did not agree to and did not want annexation. The petitions signed by the citizens of the Independent Hawaiian Kingdom prevented United States Senate from obtaining the 2/3 majority vote required by the U. S. Constitution to annex another nation, in this case, the Independent Kingdom of the Hawai'i.

However, the American government was not . followed the U. S. Constitution. It was, and apparently still is, a military-led government, determined then to be, and now to remain a world military-colonial power at the expense of innocent, independent native peoples! In January 1898 the U.S. took Hawai'i, unconstitutionally. . In February 1898 the U.S. declared war on Spain. It took over Guam, Cuba, and Puerto Rico. The war against Spain lasted only 4 months. In the Treaty of Paris, that followed the end of that war, the U. S. paid Spain \$20,000,000 for the Philippines. The U.S. warships forced the peoples' Republic of the Philippines into submission and the U.S. took over and continued colonial control over the Philippines as Spain had done for 500 years of occupation.

In 1900 the U. S. took over what is now known as American Samoa. The US Navy had had a ships' coaling-station there since 1872.

If we are honest, we all know that the Annexation of Hawai'i by a Congressional Resolution in 1898, was made against the will of the Hawaiian people and was an unconstitutional farce made possible only by military power and colonial control over the people of these Islands and their independent nation. Again we go through another US process to confirm all that history as being legal when it was illegal. We have gone through this so-called recognition process before. Do you remember The Native Hawaiians Study Commission, going on 20 years ago? Volume I of the two Reports (1983) cleared the U. S. of any responsibility for the take-over. Look to the Source: Nānā i ke Kūmu. Volume I was written by commissioners representing the U. S. Government position. Not surprising at all! Then comes

Volume II, expressing the opposite conclusion. It was written by the Hawaiians on the Commission.

Yes, we have gone through this before! The so-called "Apology Resolution" just ten years later (1993), actually reversed Volume I by admitting the many acts of colonialism and cultural genocide against the Hawaiian people. So what? Nothing. Seven years later, we are still living in a colony. Now they tell us to jump through another hoop in order to get money from Congress! Do you believe this?

This Akaka so-called Recognition Bill is being claimed to save the Hawaiian people a lot of money in Congressional funding that may not be available otherwise. When the US gives all the "ceded" lands back to Hawaiians, we would have plenty money for our Hawaiian programs. Isn't it time for justice to be served? If there were JUSTICE, there would be billions of dollars in Reparations paid to the Hawaiian people by the United States for illegally invading and helping traitors steal the Independent Kingdom of Hawai'i in 1893, and in 1898 for annexing an Independent Nation without the consent of its people.

Many Hawaiians know, or are about to understand, that there is no justice in the American system. This bill submitted by Senator Akaka and supported by Senator Inouye is a traitorous document that will put the Hawaiian people right back behind the colonial 8-ball.

The "rights" allowed Hawaiians in this bill will allow them to decide which roads to pave on their Reservation, and on which Reservation – Nanakuli, or Keaukaha – to allow what U. S.

corporation to build a casino. Under this bill true Independence is given up for a few million dollars that still have to be begged from Congress every year. As is, this bill kills any form of Hawaiian Independence. The Departments of Interior and Justice have nothing to do with true Independence. They told us that in December. Unfortunately, their plan locks Hawaiians into a wardship from which there is no way out.

In Summary: Hawaiians will be able to continue to beg Congress for funds for Hawaiian programs. This bill claims Hawaiians as Native Americans!!! We all know that Hawaiians are NOT Native Americans. Hawaiians are Kanaka Maoli; they are descendants of the citizens of the Independent Kingdom of Hawai'i!! Mahalo for listening.

Marion Kelly

Let  
Hawaiians  
decide  
what they  
want, and  
when they  
want it.  
Thank you.

TESTIMONY OF  
THOMAS K. KAULUKUKUI, JR.  
IN SUPPORT OF  
S. 2899

A Bill to Express the Policy of the United States  
Regarding the United States' Relationship  
With Native Hawaiians, and for Other Purposes

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I offer all love, honor and respect to the Great Spirit who watches over us and protects us; to the spirits of this sacred land, the sea which surrounds it, and the boundless sky above; to our ancestral spirits who are always with us; to our elders who have passed on; to the memory of our great kings and Queens, and the paramount and other chiefs and their descendants; to our elders who yet live and who guide us with their wisdom; to the Honorable Senators Daniel K. Inouye and Daniel K. Akaka, to Congressman Neil Abercrombie and Congresswoman Patsy Mink, and other members of this important committee and its staff; to the other great leaders present today; to all my fellow Hawaiians; and to all others who are here today, from wherever you have come. Aloha!

I strongly support S. 2899, and urge its passage by the United States Congress.

Although I currently serve as a trustee of the Queen Lili'uokalani Trust, a charitable trust which assists orphan and destitute Hawaiian and other children, I offer my testimony as a Hawaiian individual and as the family representative of the Thomas Kaulukukui family. Our extended family is one which has for several generations served our community as teachers, coaches and counselors. I am honored to represent my family on this important matter.

In presenting this testimony, I rely not only upon my personal opinion, but also upon my past experience as a schoolteacher; an attorney; a Hawaii Circuit Judge; a commissioner of the Department of Hawaiian Home Lands; a community affairs/Hawaiian health executive for The Queens Health Systems; and a trustee of the Queen Lili'uokalani Trust. I have also learned much from wise teachers, the most important of whom is my father, Thomas K. Kaulukukui, Sr., a respected Hawaiian elder and community leader, who is a former chairman of the Office of Hawaiian Affairs.

S. 2899 expresses the policy of the United States regarding its relationship with Native Hawaiians. S. 2899 should be passed into law for the following reasons.

1. *Federal Recognition & Trust Duty*

S. 2899 will result in formal federal recognition of Native Hawaiians as a distinct, legally cognizable group. This aligns with Hawaiians' *historical* view of themselves, and with prior congressional recognition. In addition, S. 2899 reaffirms the special trust duty between the United States and Native Hawaiians.

2. *Preservation & Protection of Current Federal Programs For Native Hawaiians*

As stated in the "Findings" section of S. 2899, Congress has previously recognized Native Hawaiians as a distinct indigenous group. Based upon this recognition, dozens of statutes have been enacted on behalf of Native Hawaiians in furtherance of the trust responsibility of the United States. Notwithstanding the foregoing, the United States Supreme Court in *Rice v. Cayetano*, No.98-818 (February 23, 2000) seemed to cast doubt upon the status of Native Hawaiians. S. 2899 will remove any such doubt, will protect the programs enacted pursuant to aforementioned statutes, and will reaffirm the existing trust relationship.

3. *Co-ordination of Federal Agencies & Establishment of Orderly Process To Develop Hawaiian Self-Government*

S.2899 will also greatly benefit Native Hawaiians by co-ordinating federal policies and ensuring consultation between federal agencies and Native Hawaiians. S. 2899 also establishes an orderly process for compiling a roll of Native Hawaiians, and for progress towards Native Hawaiian self-government. This will harmonize the efforts of many well-meaning but often disparate Native Hawaiian groups who have similar goals.

4. *Achievement of Pono (Justice & Propriety)*

Perhaps the most singular benefit of S. 2889 is not a matter of law, but a matter of spirit. Native Hawaiians have always recognized that they are a unique and distinct aboriginal, indigenous, native people. To fail as a matter of law to recognize this fact would be *pono 'ole* (unjust and improper). The enactment of S. 2889 would be a just and righteous act, i.e., would be *pono*. Accordingly, I urge the Congress of the United States to pass into law S. 2899.

Respectfully submitted,



Thomas K. Kaulukukui, Jr.

AUGUST 15, 2000

KEOKI PUAOI  
P. O. BOX 91  
ANAHOLA, KAUAI 96703

WRITTEN TESTIMONY

2000 AUG 18 AM 10:51

Re: THE POLICY OF THE UNITED STATES REGARDING THE UNITED STATES RELATIONSHIP WITH  
NATIVE HAWAIIANS AND FOR OTHER PURPOSES.

ALOHA JOINT HEARING COMMITTEES,

I HAVE READ THE THOUGHTS AND CONCERNS REGARDING THE ABOVE POLICY. WE THE KANAKA MAOLI DESCENDANTS OF OUR ABORIGINAL KANAKA MAOLI ANCESTORS, WHO PRIOR TO 1778, STILL TODAY OCCUPIED AND EXERCISED OUR INHERENT SOVEREIGNTY IN THIS GEOGRAPHICAL REGION THAT IS KNOWN TODAY AS HAWAII. WE THE KANAKA MAOLI ARE NOT NATIVE HAWAIIANS AS STATED IN S. 2899 HR 4904. CLARIFICATION OF THE WORD HAWAIIAN, WHO IS A HAWAIIAN??? THERE IS NO TRUE DEFINITION IN ANY DICTIONARY PERTAINING TO THE WORD HAWAIIAN, IT'S NOT A NOUN, NOR A PRONOUN. FOR A WORD TO BECOME A WORD THAT WORD MUST BE LISTED AND BE DEFINE IN A DICTIONARY, THE WORD KANAKA MAOLI IS LISTED AND DEFINE IN OUR ANCESTORS DICTIONARY. PLEASE MAKE CORRECTION AND DIRECT ALL POLICY DIRECTLY TO THE KANAKA MAOLI RACE.

PRESIDENT GROVER CLEVELAND'S MESSAGE TO THE UNITED STATES CONGRESS RECOGNIZE AND ADDRESS THE ILLEGAL OVERTHROW OF THE HAWAIIAN KINGDOM GOVERNMENT AS AN INDEPENDENT NATION AS HE STATES TO WIT ON DECEMBER 18, 1893: "THE LAW OF NATIONS IS FOUNDED UPON REASON AND JUSTICE, AND THE RULES ON CONDUCT GOVERNING INDIVIDUAL RELATIONS BETWEEN CITIZENS OR SUBJECT OF A CIVILIZED STATE ARE EQUALLY APPLICABLE AS BETWEEN ENLIGHTENED NATIONS, AND ONLY GIVE ADDITIONAL SANCTION TO THE LAW ITSELF AND BRAND ANY DELIBERATE INFRACTION OF IT NOT MERELY AS A WRONG BUT AS A DISGRACE."

THE GENERAL RULE IS THAT AN UNCONSTITUTIONAL STATUTE, THOUGH HAVING THE FORM AND NAME OF LAW, IS IN REALITY NO LAW, BUT IS WHOLLY VOID, AND INEFFECTIVE FOR ANY PURPOSE; SINCE UNCONSTITUTIONALITY DATES FROM THE TIME OF ITS ENACTMENT, AND NOT MERELY FROM THE DATE OF THE DECISION SO BRANDING IT. "NO ONE IS BOUND TO OBEY AN UNCONSTITUTIONAL LAW AND NO COURTS ARE BOUND TO ENFORCE IT". [REFERENCE 16 AM JUR 2D, SEC 177 LATE 2D, SEC 256.]

"AN UNCONSTITUTIONAL ACT IS NOT LAW; IT CONFERS NO RIGHTS; IT IMPOSES NO DUTIES; AFFORDS NO PROTECTION; IT CREATES NO OFFICE; IT IS IN LEGAL CONTEMPLATION, AS INOPERATIVE AS THOUGH IT HAD NEVER BEEN PASSED." [REFERENCE NORTON vs SHELBY COUNTY 118 US 425 P. 442.]

WHEREAS, ALL UNCONSTITUTIONAL ACTS AGAINST MYSELF, MY OHANA AND MY ABORIGINAL ANCESTORS IS A DISGRACE TO THE UNITED STATES OF AMERICA. PLEASE BE INFORM THAT THIS TYPE OF BEHAVIOR WILL BE INFRINGING ON OUR LIBERTY AND FREEDOM AS THE KANAKA MAOLI RACE IN THIS GEOGRAPHICAL REGION AND THIS TYPE OF BEHAVIOR WILL BE CONSIDER AS ADVERSE AND GENOCIDE TO MY RACE. MAY AKUA HAVE MERCY ON YOUR U'HANE.

ALOHA AND MAHALO,  
KEOKI PUAOI  
Keoki Puaoi



*Senator Inouye*

ARTHUR K. TRASK, SR.  
P.O. BOX 492  
ANAHOLA, HAWAII 96703  
Phone: 823-0061

2000 AUG 29 PM 12:32

August 25, 2000

Senator Daniel K. Akaka

Re: Hawaiian Sovereignty

Dear Senator Akaka:

Aloha and may all the Gods give you prompt recovery dearest Senator, and Mahalo for your great and noble statesmanship.

My name is Arthur Kaukaohu Trask, native Hawaiian of the United States Bar of the Supreme Court, 1945.

It is my opinion that S.2899 by U.S. Senator Daniel K. Akaka, 100<sup>th</sup> Congress, 2<sup>nd</sup> Session, supported by Senator Daniel K. Inouye, Rep. Patsy Mink and Rep. Neil Abercrombie is unconstitutional, being in conflict repugnant an analogy to Article VI, and violation of the Declaration of Independence: "The Constitution and the Laws of the United States which shall be made in Pursuance thereof and all treaties made, or which shall be made, under the authority of the United States shall be the supreme Law of the land; and every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

S.2899 page 2 states:

"Under the treaty making power of the United States, Congress exercised its Constitutional authority to confirm a treaty between the United States and the Governance that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian government, and entered into treaties with the Hawaiian Monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1898, and of "perpetual peace and amity".

S.2899 page 3(10) states:

"The apology resolution of November 23, 1993 was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii."

The Democratic's President Grover "Honest" Cleveland in December 18, 1893, demanded of the Republican Congress to restore the Kingdom of Hawaii destroyed by unauthorized war crimes of the United States, January 17, 1893, with re-enthronement of Queen Liliuokalani and with reparation and damages.

No money or other compensation has been paid in 107 years of the most criminal degradation of American history of the Hawaiian people, being America's most patriotic and decorated war heroes of WWI, WWII, Korea, Vietnam, and others, even my son, Tyke, Marine paratrooper 13<sup>th</sup> Declarations with germs and genocide of six generations of Hawaiians by Congressional "oversight" unmentioned in the pleadings of S.2899 with shameless apology, without more.

Legal authorities and judicial president are handy in the oversight of the draftees of this legislation of Article VI of the U.S. Constitution, and I seek no regards, except my mahalo nui loa for your acknowledgment of my unenviable painful efforts at 90.

Aloha nui loa,

*Arthur K. Trask, Sr.*

Arthur K. Trask  
Former Territorial Judge